CLERK'S COPY.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 782

INTERSTATE COMMERCE COMMISSION, PETITIONER

vs.

UNITED STATES OF AMERICA, AT THE RELATION OF CITY OF LOS ANGELES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia

No. 4863.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Appellant,

vs.

INTERSTATE COMMERCE COMMISSION.

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a Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Filed July 12, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75,688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

Petition for Writ of Mandamus.

To the Honorable the Supreme Court of the District of Columbia:

Comes now the city of Los Angeles, a municipal corporation, and respectfully shows to the Court:

I. That the city of Los Angeles is a municipal corporation organized and existing under and by virtue of the laws of the state of California and is located in the county of Los Angeles, state of California.

II. That the Interstate Commerce Commission is the commission created by the Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce;" that the powers, duties and responsibilities of said Commission are specified by said Act and the acts supplemental thereto and amendatory thereof, and particularly the Act of February 28, 1920, known as the "Transportation Act, 1920;" and that said Commission has its principal office in the city of Washington, in the District of Columbia.

III. That Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific
2 Company, Southern Pacific Railroad Company, The Atchison, Topeka and Santa Fe Railway Company and Union Pacific Railroad Company are each a common carrier engaged in the transportation of passengers and property by railroad to, from and through said city of Los Angeles, in interstate and also intrastate commerce, and that each of said carriers is subject to said Act to Regulate Commerce and the acts supplemental thereto and amendatory thereof.

That said Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company each owns lines of railroad and railroad terminal properties and facilities engaged in said transportation and located in the city of Los Angeles and elsewhere; that said Southern Pacific Company operates said lines of railroad and railroad terminal properties and facilities of said Southern Pacific Railroad Company; that said Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and The Atchison, Topeka & Santa Fe Railway Company operate said lines of railroad and railroad terminal properties and facilities respectively owned by them, as aforesaid; and that the entire capital stock of said Los Angeles & Salt Lake Railroad Company is owned by said Union Pacific Railroad Company and affiliated companies and that the property of said Los Angeles & Salt Lake Railroad Company is being operated as part of the so-called "Union Pacific System".

That opposite the first page of Exhibit A which is attached to and made a part of this Petition (to which exhibit more specific reference will hereinafter be made) will be found a map showing the location of the lines of railroad of said carriers in the city of Los Angeles.

3 IV. That the railroad lines of all of said carriers (other than said Pacific Electric Railway Company) within the city of Los Angeles have been constructed and are being maintained and operated in a general northerly and southern direction through said city, across many of the most important public streets of said city; that said railroad lines separate important and populous sections of the city of Los Angeles known as Boyle Heights and East Los Angeles, and also important and populous communities east of Los Angeles, from the business and residence centers of the city of Los Angeles located west of said lines of railroad and that said lines of railroad have made and now make intercommunication between the portions of the city of Los Angeles and other communities located on either side of said lines of railroad, whether such communication be by railroad, or by vehicular or pedestrian traffic, slow, difficult, unsafe and dangerous.

That the so-called "Coast" and "Valley" routes of the Southern Pacific Company, herein at times called the Southern Pacific, connecting Los Angeles with San Fransicso and with the San Joaquin and Sacramento Valleys, unite at Burbank about 12 miles north of said Southern Pacific Company's so-called Arcade Station in Los Angeles, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the northeast, in the vicinity of Pasadena; that at said Arroyo Seco, the said Southern Pacific Company's said line of railroad crosses from the east bank to the west bank of the Los Angeles River and thence continues southerly along the river to the North Broadway Viaduct; that the line then crosses under said viaduct and, leaving the river, proceeds southwest along North Spring Street
4 to the northern end of Alameda Street and thence southerly along Alameda Street at grade, crossing many important streets, to the Southern Pacific Company's Arcade passenger station just west of Alameda Street between Fourth and Sixth Streets; that the Southern Pacific Company's Sunset or El Paso route approaches the city of Los Angeles from the east and crosses the Los Angeles River along Alhambra Avenue and then turns south into Alameda Street at North Main Street, a short distance south of the north end of Alameda Street and proceeds thence southerly to the Arcade Station as do the trains from the north; and that south of said Arcade Station the Southern Pacific Company occupies Alameda Street at grade to the southerly boundary of the city with its line to San Pedro and Santa Ana.

That the main line of The Atchison, Topeka and Santa Fe Railway Company, herein at times called the Santa Fe, from the east through Pasadena follows the Arroyo Seco and crosses from the east bank to the west bank of the Los Angeles River just north of said North BroadwayViaduct; that the line thence passes under said Viaduct and proceeds thence southerly along the west bank of the river across Alhambra Avenue to said company's passenger station on the west bank of the river, just south of First Street; that an alternative route from San Bernardino joins the Los Angeles-San Diego line at Fullerton and enters the city from the southeast, crossing the river from the east bank

to the west bank south of Butte Street and following thence north along the west bank of the river to the Santa Fe's said passenger station; and that a local line of the Santa Fe from Redondo and San Pedro joins said last mentioned line near Butte Street.

That the main line of Los Angeles and Salt Lake Railroad Company, herein at times called the Salt Lake, enters the city from the southeast through a point called Hobart Junction; that said line formerly proceeded up the east bank of the river to the Salt Lake's former passenger station located on the east bank of the river, south of First Street, but that subsequent to the abandonment by the Salt Lake of its said passenger station on or about November 1, 1924, the Salt Lake, as a temporary matter, operates its passenger trains from the east bank to the west bank of the river at or about Butte Street, thence west along said street to a connection with the tracks of the Southern Pacific along Alemeda Street and thence north over and along said tracks at grade along Alameda Street to and into the Southern Pacific Company's said Arcade passenger depot; that one line of the Salt Lake continues from Butte Street north along the east bank of the river, passes under said North Broadway Viaduct and follows thence up the Arroyo Seco to Pasadena; that a branch of said last mentioned line crosses the Arroyo Seco to the north and terminates at Glendale, a suburb approximately 6 miles north of the Arcade station; and that another local line of the Salt Lake from the south serves Long Beach and San Pedro and joins the main line between Hobart Junction and the river.

That over their said lines of railroad the Southern Pacific, Santa Fe and Salt Lake transport into and out of the city of Los Angeles annually in excess of 2,250,000 passengers; that in the transportation of said passengers said carriers operate into and out of said city annually in excess of 12,000 arriving and an equivalent number of departing passenger trains.

That the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under said North Broadway Viaduct at the entrance to the city from the north, the two

former lines being located under said Viaduct along the west bank of the river and the latter line along the east
6 bank; and that the point at which said tracks of said carriers run under said North Broadway Viaduct is located only approximately three-fourths of one mile distant northerly from the so-called Plaza Area as described in the decisions of the Interstate Commerce Commission and the California Railroad Commission to which reference will hereinafter be made.

That the predominating passenger traffic of said carriers in the city of Los Angeles is to and from the north and east; that 69 per cent of all scheduled main line passenger trains enter Los Angeles by routes north of said Plaza Area; that 42 out of the 78 main line scheduled passenger trains daily pass under said North Broadway Viaduct and 12 run along Alhambra Avenue; that only 24 of said trains, being less than one-third enter the city from the south; and that 74 per cent, being nearly three-fourths, of all passengers use routes north of said Plaza Area.

V. That Alameda Street is the principal north and south street through the industrial section of the city of Los Angeles; that an enormous volume of east and west traffic, street and interurban electric, vehicular and pedestrian, must cross daily said street and the double-track main line of the Southern Pacific located and operated thereon; that north of the Arcade depot said tracks along Alameda Street are operated by the Southern Pacific and that south of said depot they are operated not merely by the Southern Pacific but also, since on or about November 1, 1924, by the Salt Lake in connection with its temporary use of said Arcade depot; that the presence along Alameda Street for practically its entire length of said double-track main line of the Southern Pacific at grade is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west railroad, vehicular and pedestrian
7 traffic and that said situation is constantly becoming more aggravated; that said carriers have made frequent public admission of the necessity, in the public interest, of eliminating all railroad operations along said Alameda Street, except only industrial switching for freight.

That not merely the Southern Pacific but also the Santa Fe and the Salt Lake have their duties and responsibilities in connection with said Alameda Street situation.

That all persons coming to or going from the Santa Fe depot from or to points west of Alameda Street must cross the Southern Pacific tracks located and operated thereon and that the Santa Fe has its passenger depot so located that its passengers are obliged to go through said scene of danger in order to reach it.

That the same situation would be equally applicable to the Salt Lake if that carrier should return to its passenger grounds on the east bank of the Los Angeles river and that at the present time the Salt Lake, by running its passenger trains into and out of the Southern Pacific's Arcade station, under said temporary arrangement, along Alameda Street south of the Arcade station, has aggravated and is aggravating the condition along that part of Alameda Street.

VI. That the Salt Lake does not now own any passenger depot in the city of Los Angeles; that said carrier formerly owned and operated a passenger station on the east bank of the Los Angeles river, north of First Street; that the passenger station building at said location was a two-story frame building which was erected in 1891 at a cost of approximately $10,000.00; that said structure was inadequate to serve the needs of the traveling public and that its location was inconvenient and its access dangerous to
8 the public; that in the year 1924 a fire fortuitously did some damage to the second story of the building, whereupon the Salt Lake was authorized by the Railroad Commission of California to run its trains into the Arcade depot of the Southern Pacific Company as a temporary matter; that in its said order (Decision No. 13,923, Vol. 25, Opinions and Orders, Railroad Commission of California, p. 281) the said Railroad Commission expressly provided that the Salt Lake should not use the granting of said application either by way of defense or argument on the ground of capital expenditure or on any other ground against any order, or in any proceeding then or thereafter pending before said Commission or any other Commission, court or public tribunal providing for or looking toward railroad or terminal unification in the city of Los Angeles; that the Salt Lake accepted said order of said Railroad Commission, began its operations into said Arcade depot on or about November 1, 1924 and has continuously sub-

sequent to said date operated its Los Angeles passenger trains into and out of said Arcade passenger depot; that in order to reach said Arcade depot, the Salt Lake operates all its passenger trains at grade on and along Alameda Street from Butte Street on the south to said Arcade depot on the north, across many important public streets and that thereby the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street has been greatly accentuated.

That the Santa Fe's passenger station in the city of Los Angeles is located along the west bank of the Los Angeles river, south of First Street, and that the depot is a small brick building which was erected in 1893; that the total value of the building with all furniture, parking and paving, does not exceed $50,000.00; that the present structure is inadequate and does not meet the reasonable requirements of the traveling public; that the officials of the Santa Fe have on numerous occasions made public acknowledg-

9 ment of the inadequacy of the present passenger station and facilities and of the necessity for an adequate, up-to-date passenger station and that such station and facilities if provided by the Santa Fe independently without reference to a union passenger station, would cost approximately $1,182,317.00; that substantially all members of the public who have occasion to use the Santa Fe's passenger depot can do so only by crossing Alameda Street and the main line tracks of the Southern Pacific located thereon; and that the Santa Fe's said depot is located on a site which is inconvenient and difficult of access and dangerous to the public desiring to use said passenger depot.

That the Southern Pacific's Arcade passenger depot in the city of Los Angeles was constructed by said carrier in 1915 under authority of an order of the Railroad Commission of California (Decision No. 1090, Vol. 3, Opinions and Orders, Railroad Commission of California, pp. 927-30) made on a petition of said carrier; that as the result of public protests on the ground that the elimination of the Southern Pacific's railroad grade crossings on Alameda Street would be delayed or prevented by the construction of a passenger depot at said point, the Railroad Commission's order authorizing the demolition of the old Arcade passenger depot at said point and the erection of the pres-

ent depot contained an express provision "that the tearing down and abandonment of said old depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this commission therefor, shall never be used as a defense against the separation of grade crossings in the state of California"; that the public interest and the public safety urgently require the elimination from Alameda Street of all passenger operations and all freight operations of the Southern Pacific and the Salt Lake except only freight switching and that the only plan for such elimination consistent with the public convenience and necessity and the public safety is to change the location of the Southern Pacific's passenger depot from the present Arcade site to a site in the vicinity of the Plaza, near the northern entrance to the city, by which plan said trains will be kept off Alameda Street and the Alameda Street grade crossing problem will automatically be solved; that the waiting room of the Arcade depot is now overcrowded daily between the hours of 7 and 8 P. M. and that the building is rapidly becoming inadequate; and that changes and alterations in the building so as to make the same adequate for a number of years longer would cost approximately $500,000.00.

VII. That in order to provide adequate and sufficient passenger station facilities for the Southern Pacific, the Santa Fe and the Salt Lake in the city of Los Angeles, to promote the security, convenience and necessity of the passengers and employees of said carriers and to secure adequate service and facilities for the performance by said carriers, and each of them, of their obligations as common carriers, it is necessary and the public safety, convenience and necessity require, that a union passenger station and facilities incidental thereto be erected by said carriers in the city of Los Angeles in the Plaza Area hereinafter referred to and that in connection therewith said carriers make such improvements and changes in their existing facilities and arrange for such joint or other use of tracks or terminal facilities now constructed or to be constructed within the city of Los Angeles as may be reasonably neces-

sary and incidental to the construction and use of said union passenger station.

11 That if such union passenger station be not constructed, it would nevertheless be necessary for said carriers to expend individually, in the immediate future, several million dollars for the purpose of establishing adequate and convenient passenger station facilities in the city of Los Angeles.

That it is greatly in the public interest and in the interest of said carriers themselves that these expenditures, instead of being made in a competitive and largely wasteful manner, each carrier seeking primarily to advance its own competitive interest or the interest of itself and its particular associates, should be made in a unified manner and in such a way as to avoid duplicate investments and operating expenses, prevent wasteful expenditures and serve the public interest.

VIII. That on April 26, 1921, the Railroad Commission of California, following an exhaustive investigation by its own engineers and numerous hearings extending over a period of several years, in a number of consolidated formal proceedings, rendered a decision (Decision No. 8901, Vol. 19, Opinions and Orders, Railroad Commission of California, p. 740), in which, among other matters, the California Commission ordered the Southern Pacific, the Santa Fe and the Salt Lake to file plans for the erection of a union passenger station at some site within a defined area in the vicinity of the Plaza, in the city of Los Angeles, which area was specified as being bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River; and that said area is herein at times referred to as the Plaza Area.

That, following a rehearing had on the petition of the railroad companies, the California Commission on December 6, 1921, rendered a decision (Decision No. 9838, Vol. 20, Opinions and Orders, Railroad Commission of Cali-

12 fornia, p. 937) modifying in certain respects not here material its former decision but ordering the carriers to proceed to secure sufficient land within said Plaza Area for a union passenger station, to prepare and submit plans for such union station, passenger terminal and necessary facilities, and upon approval of the plans by the Com-

mission, to proceed with the construction of such station and terminal.

IX. That the Southern Pacific, the Santa Fe and the Salt Lake thereupon each took the Railroad Commission's said decision and order to the Supreme Court of California by writs of review; that in a case entitled *The Atchison, Topeka and Santa Fe Railway Company* v. *Railroad Commission of California,* 190 Cal. 214, the Supreme Court of California, on December 19, 1922, held that the California Railroad Commission had lost its jurisdiction over the union passenger terminal situation in Los Angeles and that by virtue of the provisions of the Transportation Act of 1920, jurisdiction had vested exclusively in the Interstate Commerce Commission.

That, after reviewing certain provisions of the Act to Regulate Commerce, as amended by the Transportation Act of 1920, and commenting on a number of decisions, the Supreme Court of California said (p. 226):

"It is clear from the foregoing that Congress has not only vested jurisdiction in the Interstate Commerce Commission over the question of the extension of terminal facilities, such as contemplated by the order of the Railroad Commission in the case at bar, but has also prohibited the railroads from making such improvements without the consent of the Interstate Commerce Commission. This being true, Congress has fully occupied the field of regulation of such matters and the power of the state commission has thereby been terminated."

13 That the Supreme Court of California thereupon annulled the Railroad Commission's order and concluded as follows (p. 377):

"From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of

California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject sought by it to be exercised in the several proceedings before it and by the order presented for review herein."

That the Railroad Commission of California thereupon took said decision by certiorari to the Supreme Court of the United States in a proceeding entitled *Railroad Commission of California* vs. *Southern Pacific Company.*

X. That, following said decision by the Supreme Court of California, the City of Los Angeles, the relator herein, thereafter, in March, 1923, filed with the Interstate Commerce Commission its formal complaint in Docket No. 14,778 of said Commission, entitled "City of Los Angeles, Complainant, vs. Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, and Union Pacific Railroad Company, Defendants."

That in and by its said complaint in said Docket, the City of Los Angeles, after setting forth the facts on which it relied for relief, asked the Interstate Commerce Commission to make an order or orders commanding said defendants, as their interests may respectively appear, to take action, among other matters, as follows:

14 "(*d*) To construct and thereafter operate and use a union passenger depot and appurtenances on a site within that portion of the city of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, and to acquire such land, if any, as may be necessary for said purpose;

"(*e*) To abandon the operation of said main line tracks of Southern Pacific Railroad Company on said Alameda Street from College Street to East Fifteenth Street, inclusive, for the operation of passenger trains and also freight trains except local freight switching; and

"(*f*) To construct or acquire such structures, facilities, tracks and other property, to make such extensions or abandonments of railroad lines or other facilities or of the operation thereof, and to arrange for such joint or other

use of tracks or terminal facilities now constructed or to be constructed, within the city of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the matters hereinbefore and in this prayer specified, or any thereof."

That in its said prayer for relief the city of Los Angeles also asked the Interstate Commerce Commission to make such other or further order or orders in furtherance of the relief asked for as the Commission might find to be just and equitable and in the public interest.

That a correct copy of the complaint of the city of Los Angeles in said Docket No. 14,778 is attached hereto marked Exhibit A and made a part hereof as fully and with the same effect as if set out here in full; that Exhibits 2, 3 and 4 to said complaint, which are not here reproduced, may be found as follows:

Exh. No. 2, Decision No. 8901, rendered by the Railroad Commission of California on April 16, 1921—Vol. 19, Opinions and Orders, Railroad Commission of California, p. 740.

Exh. No. 3, Decision No. 9838, rendered by the Railroad Commission of California on December 6, 1921—Vol. 20, Opinions and Orders, Railroad Commission of California, p. 937.

Exh. No. 4, Decision rendered by the Supreme Court of California on December 19, 1922, in *The Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, and that reference is hereby respectfully made to each of said 3 decisions as thus reported.

XI. That thereafter, on April 7, 1924, the Supreme Court of the United States made its decision in said proceeding entitled *Railroad Commission of California* v. *Southern Pacific Company,* 264 U. S. 331, and in said decision affirmed said judgment of the Supreme Court of California, and held that before an order of any public authority directing the construction of a union passenger depot under the circumstances existing in the city of Los Angeles could be effective it would be necessary to secure from the Interstate Commerce Commission certain specified certificates of public convenience and necessity.

That in said decision, the Supreme Court declared that the question before the Court was as follows (p. 341):

"Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920."

That in the concluding paragraphs of its decision, the Supreme Court of the United States said (p. 347):

"We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an order to provide, maintain and use a union station; that a hearing followed, and that, pending the decision in this court, the matter is held under consideration.

16 "For the reasons given, we think that the course taken by the City of Los Angeles was the correct one."

That the petition of the City of Los Angeles to which the Supreme Court of the United States thus referred in its said decision was and is the complaint of the City of Los Angeles in said Docket No. 14,778, copy whereof is attached to this Petition as Exhibit A.

That the Supreme Court of the United States then concluded its said decision as follows (p. 348):

"Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto, as ordered by the State Railroad Commission.

"The judgment of the Supreme Court of California is affirmed."

XII. That thereupon further evidence was taken by the Interstate Commerce Commission in said Docket No. 14,778, the matter was submitted, briefed and argued, and thereafter, on July 6, 1925, the Interstate Commerce Commission rendered its decision therein (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421).

That after a painstaking and exhaustive review of the entire record, the Interstate Commerce Commission made the following findings of fact (p. 459):

"Upon a consideration of all the facts of record we find:

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

17 "2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

"3. That the present and future public convenience and necessity require and will require (*a*) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenience and proper operation of such union passenger station and terminal.

"4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

"5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of

terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragarph 3 above.

"6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business."

That the Commission, however, refused to give consideration to the evidence for the purpose of determining whether it should make its order *requiring* any of the defendant carriers to construct and operate a union passenger station, as prayed for by the city of Las Angeles, on the ground that the Commission did not have jurisdiction to
18 make such order;

That in this connection, the Commission said (p. 426):

"Careful study of the Interstate Commerce Act convinces us that Congress has not conferred upon us authority to require carriers to construct union passenger stations under conditions such as are here present."

That on the same subject the Commission further said (p. 430):

"We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14,778. To make the record clear, we repeat that no question of discrimination or preference is presented here; and that under the issue framed in the complaint in No. 14,788 we will give no consideration to matters shown of

record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants."

That the Commission made its order denying the application in Finance Docket No. 3,569, being an application of the Southern Pacific and the Salt Lake for permission to make effective a plan under which the Arcade depot of the Southern Pacific would be used as a *joint* depot by that Company and the Salt Lake, and concluded its decision as follows:

"We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

19 That a correct copy of the said decision of the Interstate Commercee Commission rendered on July 6, 1925 in said Docket No. 14,778 is attached hereto, marked Exhibit B and made a part hereof, as fully and with the same effect as if set out here in full.

XIII. That the Railroad Commission of California thereupon reopened the matters pending before it for further consideration and determination and after receiving voluminous additional testimony rendered a further decision on

July 8, 1927 (Decision No. 18,593, Vol. 30, Opinions and Orders, Railroad Commission of California, p. 151).

That in said decision, the California Commission made findings of fact substantially identical with the 6 findings of fact theretofore made by the Interstate Commerce Commission and hereinbefore set forth and added the following 4 further findings:

"(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the city of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said passenger station.

"(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14788, to which reference has been made hereinabove.

"(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in or opinion, impairing the ability of these carriers to perform their respective duties to the public.

"(10) That said construction ought reasonably to be made."

That the portion of the city of Los Angeles referred to in siad Finding No. 7 is the identical area hereinbefore referred to as the Plaza Area and that a copy of Commission's Exhibit No. 4-b referred to in said Finding No. 8 is

attached to Exhibit C attached to this petition, to which exhibit reference will hereinafter be made.

That the California Commission thereupon made its order requiring the Southern Pacific, the Santa Fe and the Salt Lake to construct a union passenger station within said Plaza Area at a cost of approximately $10,000,000.00 and in substantial compliance with the plan outlined in said Commission's Exhibit 4-b, and to perform specified other acts and provided that said order should become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates of public convenience and necessity.

That a correct copy of the said decision of the California Railroad Commission rendered on July 8, 1927, is attached hereto and marked Exhibit C and that attached thereto is a copy of said Commission's Exhibit 4-b and that the same are made a part hereof as fully and with the same effect as if set out here in full.

21 XIV. That thereupon the city of Los Angeles filed with the Interstate Commerce Commission in said Docket No. 14,778 its Petition dated July 25, 1927 in which petition the city of Los Angeles reviewed the provisions of the Act to Regulate Commerce, referred to the decisions of the Commission and the courts relied upon by the city of Los Angeles, including the decision of the Commission in *Chamber of Commerce, Breckenridge, Texas,* v. *Wichita Falls, Ranger & Fort Worth R. Co.,* 109 I. C. C. 81 and the decision of the Supreme Court of the United States in *Alabama & Vicksburg Railway Company* v. *Jackson & Eastern Railway Company,* 271 U. S. 244, each of which decisions had been rendered subsequent to the Commission's said decision of July 6, 1925, in the Los Angeles Passenger Terminal Cases, in justification of the City's position that the Interstate Commerce Commission has full power and authority to make the order requested by the City *requiring* the Southern Pacific, the Santa Fe and the Salt Lake to construct and operate a union passenger depot in the said Plaza Area in the city of Los Angeles and again prayed that such order be made.

That in its said Petition, the city of Los Angeles asked that the Interstate Commerce Commission take action as follows:

"1. Issue its certificates in accordance with its Findings Nos. 1 to 6, inclusive, heretofore made herein and appearing in 100 I. C. C. 459-460.

"2. Make its order directing the defendants Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company, and each of them, to construct and thereafter operate a union passenger station and appurtenances within that portion of the City of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, together with such tracks, connections and all other terminal facilities, and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, and to acquire such land, if any, as may be necessary for said purpose, at a total cost of approximately ten millions ($10,000,00-.00) in substantial compliance with the plan outlined in "Exhibit B" attached to this petition.

"3. Make such additional findings and orders, issue such further certificates and grant such other and further relief in furtherance of the relief herein asked for as the Commission may find to be just and equitable and in the public interest."

That "Exhibit B" referred to in said Paragraph 2 was and is the plan hereinbefore referred to as Commission's Exhibit 4-b.

That a correct copy of the said Petition of the city of Los Angeles, dated July 25, 1927, is attached hereto, marked Exhibit D and that the same is made a part hereof as fully and with the same effect as if set out here in full; and that Exhibit A to said Petition, which exhibit is not here reproduced, is Exhibit C attached to this Petition.

XV. That after the filing of further briefs and oral argument, the Interstate Commerce Commission on May 8, 1928 rendered its decision on said Petition of the city of

Los Angeles and on a somewhat similar Petition filed in the same Docket No. 14,778 by the Railroad Commission of California.

That in its said decision the Interstate Commerce Commission adhered to the conclusions expressed in its said decision of July 6, 1925 (100 I. C. C. 421; Exhibit B to this Petition), found that the additional findings of the California Railroad Commission numbered 7 to 10 inclusive, and hereinbefore in this Petition set forth, find sufficient support in the record and issued its certificates as requested in Paragraph 1 of the prayer of the city of Los Angeles hereinbefore set forth.

That the Commission, however, in the majority opinion, again refused to take the final step of ordering the
23 Southern Pacific, the Santa Fe and the Salt Lake to construct a union passenger depot in the Plaza Area, as prayed for by the city of Los Angeles, and to consider the evidence bearing on the propriety of making such order, and that the Commission again based its refusal to make such order or to consider the evidence hearing thereon, on its view that, as a matter of law, it does not have the jurisdiction, under the Act to Regulate Commerce, to make such order, and that in this connection, the majority opinion says:

"Re-examination of the whole subject again leads to the conclusion that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint."

That the Commission thereupon made its order reading in part as follows:

"*It is ordered,* that the applications in No. 14,778, in so far as they seek an order requiring the construction of a union passenger station and terminal in Los Angeles, Calif., be, and it is hereby, denied."

That Commissioner Eastman filed an opinion, concurring in part with the majority opinion but holding that the order requiring the construction of said union passenger depot as prayed for by the city of Los Angeles should have been made; that Commissioners Lewis and McManamy joined

in said view and expression; that in said opinion Commissioner Eastman after reviewing the provisions of the Act to Regulate Commerce and a number of the decisions on which the city of Los Angeles relies in this connection, held that the order for which the City prayed should have been issued and said:

"My conclusion is that, considering the various statutory provisions together, we probably have power to enter the desired order. But this is not the only reason for such action. Certainly a conclusion that we have no power to enter an order is at least subject to much doubt.
24 Certainly, also, the carriers propose to litigate this case as long and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we, as well as the State commission, enter an order. This aspect of the matter was strongly and persuasively presented by complainants. In view of the manifest uncertainty as to what the law is, it is a course which we are quite justified in following and the one which is most likely to result in a needed clarification of the law."

That a correct copy of the Interstate Commerce Commission's said decision, certificate and order of May 8, 1928 is attached hereto, marked Exhibit E and made a part hereof as fully and with the same effect as though set out here in full.

XVI. That Paragraph 3 of Section 3 of the Act to Regulate Commerce, as amended by the Transportation Act of 1920, reads as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

That Paragraph 4 of Section 3 of the Act to Regulate Commerce, as added by the Transportation Act of 1920, reads as follows:

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the abiltiy of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the tems fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

That Paragraph 21 of Section 1 of the Act to Regulate Commerce, as added by the Transportation Act of 1920, reads as follows:

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: Provided, That

no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

That Section 12 of the Act to Regulate Commerce reads in part as follows:

26 "and the Commission is hereby authorized and required to execute and enforce the provisions of this Act."

XVII. That each finding of fact contained in the said decisions of the Interstate Commerce Commission of July 6, 1925 and May 8, 1928 and in said decision of the Railroad Commission of California of July 8, 1927 is true and is shown by the evidence before the Interstate Commerce Commission in said Docket No. 14,778; that a union passenger station constructed, operated and maintained by the Southern Pacific, the Santa Fe and the Salt Lake on said Plaza area, as prayed for by the city of Los Angeles in said Docket No. 14,778, is a reasonable, proper and necessary facility for the receiving, forwarding and delivering of passengers to and from the several lines of the Southern Pacific, the Santa Fe and the Salt Lake and lines connecting therewith and that the present and future public convenience and necessity require such construction, maintenance and use by said carriers and also such abandonments and extensions of lines of railroad as are incidental thereto and will result therefrom, and that the expense involved in said construction, maintenance and use of said union passenger station and appurtenances and in said abandonments and extensions of railroad lines and facilities will not impair the ability of said carriers or any thereof to perform their duty to the public.

That the city of Los Angeles, by formal resolution of its City Council now in full force and effect, stands ready to grant such franchises or permits and to enact such ordinances for the opening or closing of all such public street areas as may be necessary to make fully effective the said order for which it prays in said Docket No. 14,778 before the Interstate Commerce Commission.

27 XVIII. That the carrying into effect of the union passenger depot order requested by the city of Los Angeles, as aforesaid, would require to a substantial extent the joint use of existing railroad terminal facilities in or adjacent to the city of Los Angeles, including the following uses—the use by the Southern Pacific passenger trains from the north of the Santa Fe main line tracks on the west bank of the Los Angeles River from a point north of the North Broadway Viaduct as far south as Aliso Street; the use by the Salt Lake passenger trains from Pasadena of the Santa Fe's tracks on the west bank of the river between the same points; the use by the Salt Lake passenger trains from the south of the Santa Fe's tracks from Hobart Junction on the south to the site of the proposed union passenger depot on the north, a total distance of approximately 3 miles; and the use by the Southern Pacific of the Salt Lake's tracks on the east bank of the Los Angeles river from Alhambra Avenue southerly to Butte Street and thence west over the Salt Lake's Butte Street line to Alameda Street.

That the site for the proposed union passenger station itself, within said Plaza Area, as said site is shown on said California Railroad Commission's Exhibit 4-b, consists of a total area of 37 acres, of which area 26.87 acres, being more than two-thirds of the total area, is already railroad terminal land owned by the Southern Pacific and to a small extent by the Santa Fe; that the Southern Pacific's portion of said land, being all except a small portion owned by the Santa Fe, was acquired by the Southern Pacific after the Supreme Court of the United States had rendered its said decision of April 7, 1924; that the railroad terminal land already so owned by said carriers includes the entire land on which the head house of the proposed union pas-

28 senger station is to be located and almost all the land on which the station tracks are to be constructed; that the land remaining in private ownership is only a

small part required for station trackage together with some land west of Alameda Street desired for an appropriate approach to the head house, and is only land needed to "round out" the project.

That of the railroad terminal properties which would be jointly used in connection with the union passenger depot plan as to which the city of Los Angeles has requested said order, the entire trackage along the Los Angeles River and nearly all the land on which the union station structures are to be erected are already in the ownership of the Southern Pacific, the Santa Fe and the Salt Lake, respectively; that the joint use of said terminal facilities in connection with and as a part of said union passenger depot project would be in the public interest and would be practicable and would not substantially impair the ability of the carrier owning or entitled to the enjoyment of the same to handle its own business.

XIX. That the carrying into effect of the union passenger depot plan requested by the city of Los Angeles would require to a substantial extent the extension by the Southern Pacific, the Santa Fe and the Salt Lake, or one or more of them, of their line or lines of railroad to and into the site of the proposed union passenger depot in said Plaza area and in connection with track rearrangements incidental to the use of said union passenger depot and also the abandonment by said carriers, or one or more of them, of the use of the Southern Pacific tracks on and along Alameda Street except for freight switching at night and of other
29 tracks incidental to the use of said union passenger depot.

XX. That the aforesaid refusal of the Interstate Commerce Commission to consider the evidence in said Docket No. 14,778 for the purpose of determining whether the Commission should issue the order requested by the city of Los Angeles requiring the construction and use in the Plaza Area in the city of Los Angeles of a union passenger station by the Southern Pacific, the Santa Fe and the Salt Lake and the Commission's aforesaid order denying the said Application dated July 25, 1927 of the city of Los Angeles in so far as it seeks an order requiring the construction of a union passenger station and terminal in the city of Los

Angeles where each based solely on a matter of law, namely, on the Commission's opinion that it does not have the power, authority and jurisdiction to give such consideration to the evidence or to make such order; that in entertaining said opinion and making said order the Commission was and is mistaken as a matter of law; that as a matter of law the Commission does have the power, authority and jurisdiction to consider said evidence for the purpose of determining whether it should issue the order as prayed for requiring the construction and use of said union passenger station and thereafter to make an appropriate order based on said evidence; and that, as a matter of law, it is the duty of the Interstate Commerce Commission to give consideration to such evidence and thereupon to issue such order as the facts and the merits justify and require.

XXI. That whenever this Petition contains an allegation on a question of fact or a reference to any finding of fact made by the Interstate Commerce Commission, or by the California Railroad Commission, such fact appears and is shown by the evidence in the record before the Interstate Commerce Commission in said Docket No. 14,778.

XXII. That Petitioner has no plain, speedy or adequate remedy in the ordinary course of law.

Wherefore relator prays that this Honorable Court grant an order for the issuance of a preemptory writ of mandamus, commanding and directing the respondent to forthwith consider the evidence in said Docket No. 14,778 for the purpose of determining whether respondent should issue an order requiring the construction and use of a union passenger station in the city of Los Angeles by the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company as prayed for by said city of Los Angeles in said Docket No. 14,778 and thereafter to make such order as the facts and the merits justify and require, or, if the Court be not minded to issue its peremptory writ, then for an alternative writ commanding respondent to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the respondent to perform

said acts, and that this Court grant such other, further or different relief as to the Court shall seem proper. This is the first application for a writ of mandamus in
31 this cause.

Dated at the city of Washington, District of Columbia, this 12 day of July, 1928.

JESS E. STEPHENS,
City Attorney, City of Los Angeles,
City Hall, Los Angeles.

MAX THELEN,
Special Counsel for Relator,
Balfour Building,
351 *California Street,*
San Francisco, Cal.

EDWIN C. BLANCHARD,
Associate Counsel for Relator,
404 *Southern Building,*
Washington, D. C.

32 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Jesse E. Stephens, being first duly sworn, deposes and says: That he is the City Attorney of the City of Los Angeles, the relator in the above entitled proceeding and makes this verification in behalf of said relator; that he knows the contents of said petition; and that the facts therein alleged are true.

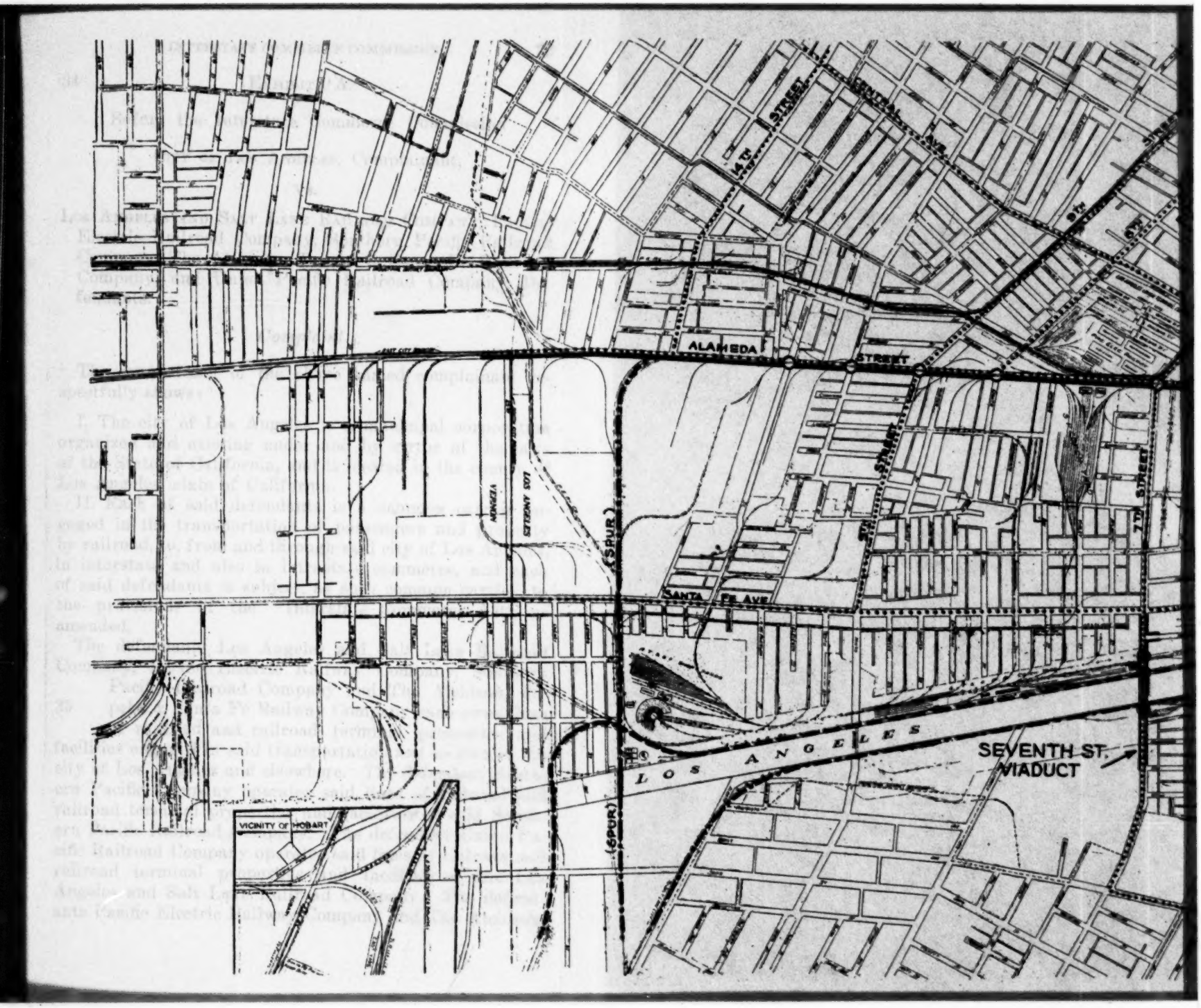
JESS E. STEPHENS.

Subscribed and sworn to before me this 14th day of June, 1928.

[SEAL.] DONNELL G. MONTGOMERY,
Notary Public in and for the County
of Los Angeles, State of California.

My commission expires Jan. 29, 1929.

(Here follows diagram marked page 33.)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SANTA FE AVE
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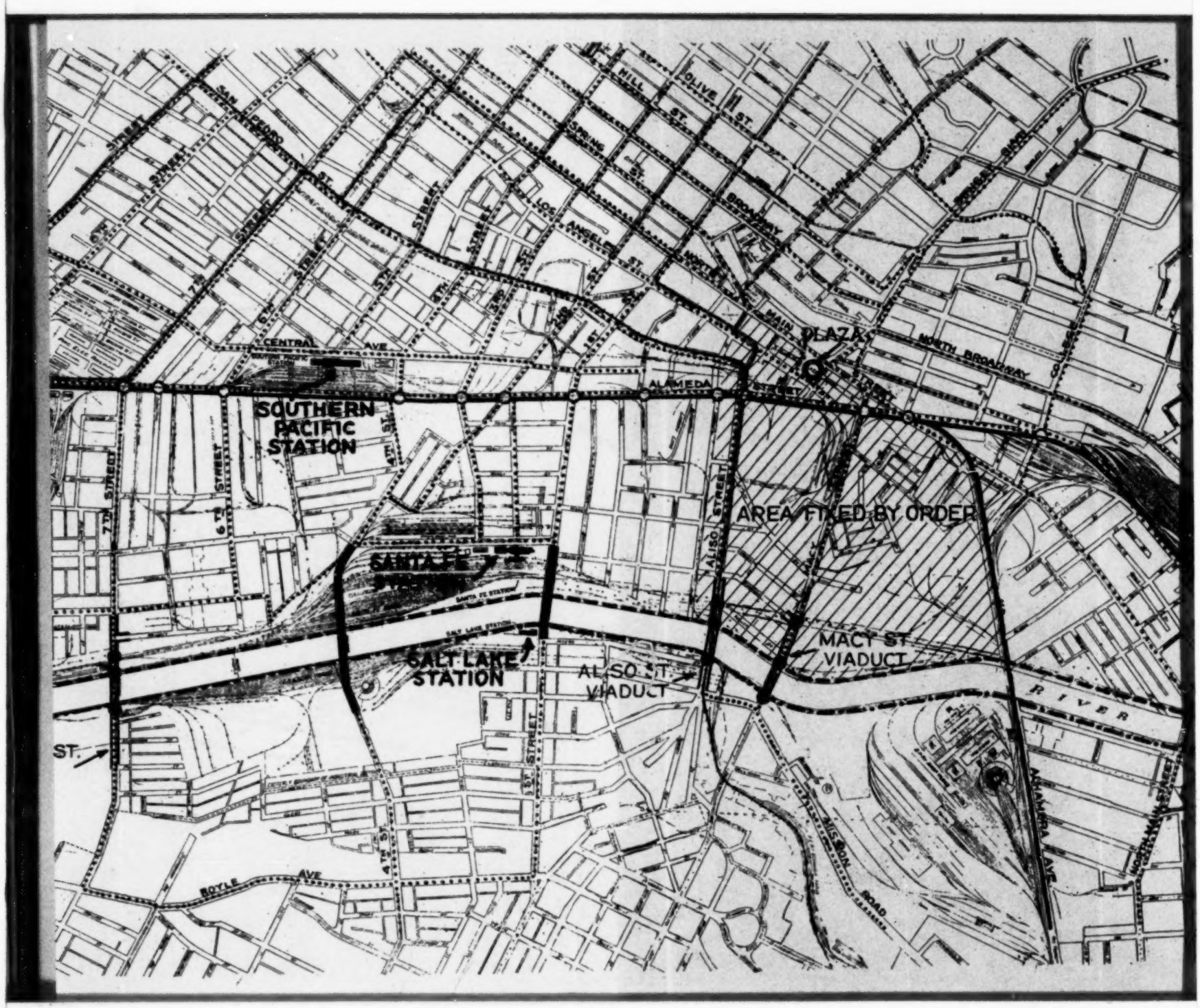
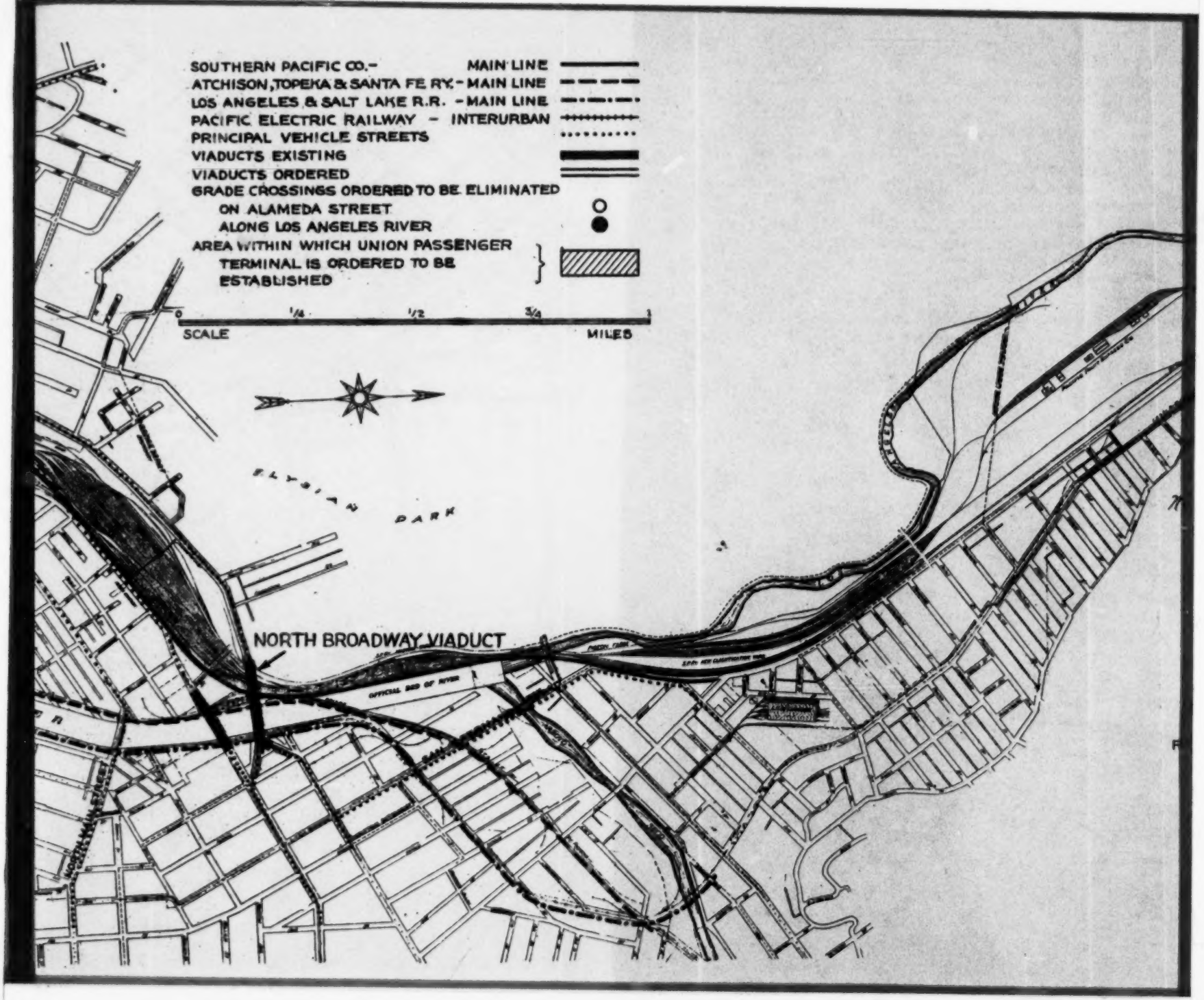

SOUTHERN PACIFIC STATION
SANTA FE
SALT LAKE STATION
AREA FIXED BY ORDER
MACY ST VIADUCT
ALISO ST VIADUCT
MAIN PLAZA
ALAMEDA
CENTRAL AVE
NORTH BROADWAY
HILL ST.
OLIVE ST.
SPRING ST.
BROADWAY
SAN PEDRO STREET
LOS ANGELES ST.
7TH STREET
6TH STREET
5TH STREET
4TH STREET
3RD STREET
2ND STREET
1ST STREET
ALISO STREET
MACY STREET
RIVER
ARCHAMBEAU AVE
MISSION ROAD
BOYLE AVE
4TH ST.
ST.


SOUTHERN PACIFIC CO.- MAIN LINE
ATCHISON, TOPEKA & SANTA FE RY.- MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
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SCALE
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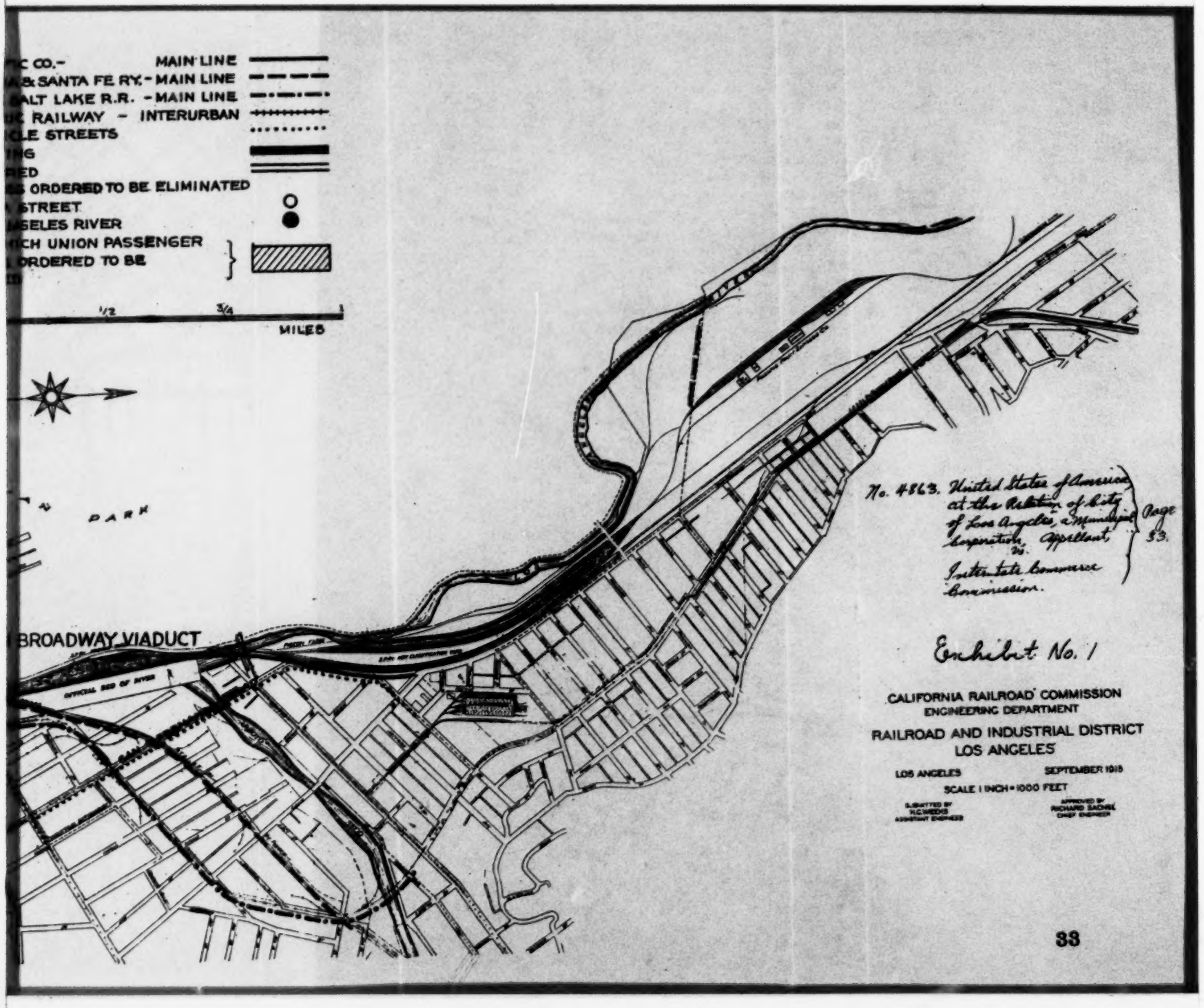
NORTH BROADWAY VIADUCT


C CO.- MAIN LINE
& SANTA FE RY. - MAIN LINE
SALT LAKE R.R. - MAIN LINE
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MILES
PARK
BROADWAY VIADUCT
OFFICIAL BED OF RIVER
No. 4863. United States of America at the Relation of City of Los Angeles, a Municipal Corporation, Appellant, vs. Interstate Commerce Commission.
Page 53.
Exhibit No. 1
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
RAILROAD AND INDUSTRIAL DISTRICT
LOS ANGELES
LOS ANGELES
SEPTEMBER 1918
SCALE 1 INCH = 1000 FEET
SUBMITTED BY H.C. WEEKS ASSISTANT ENGINEER
APPROVED BY RICHARD SACHSE CHIEF ENGINEER

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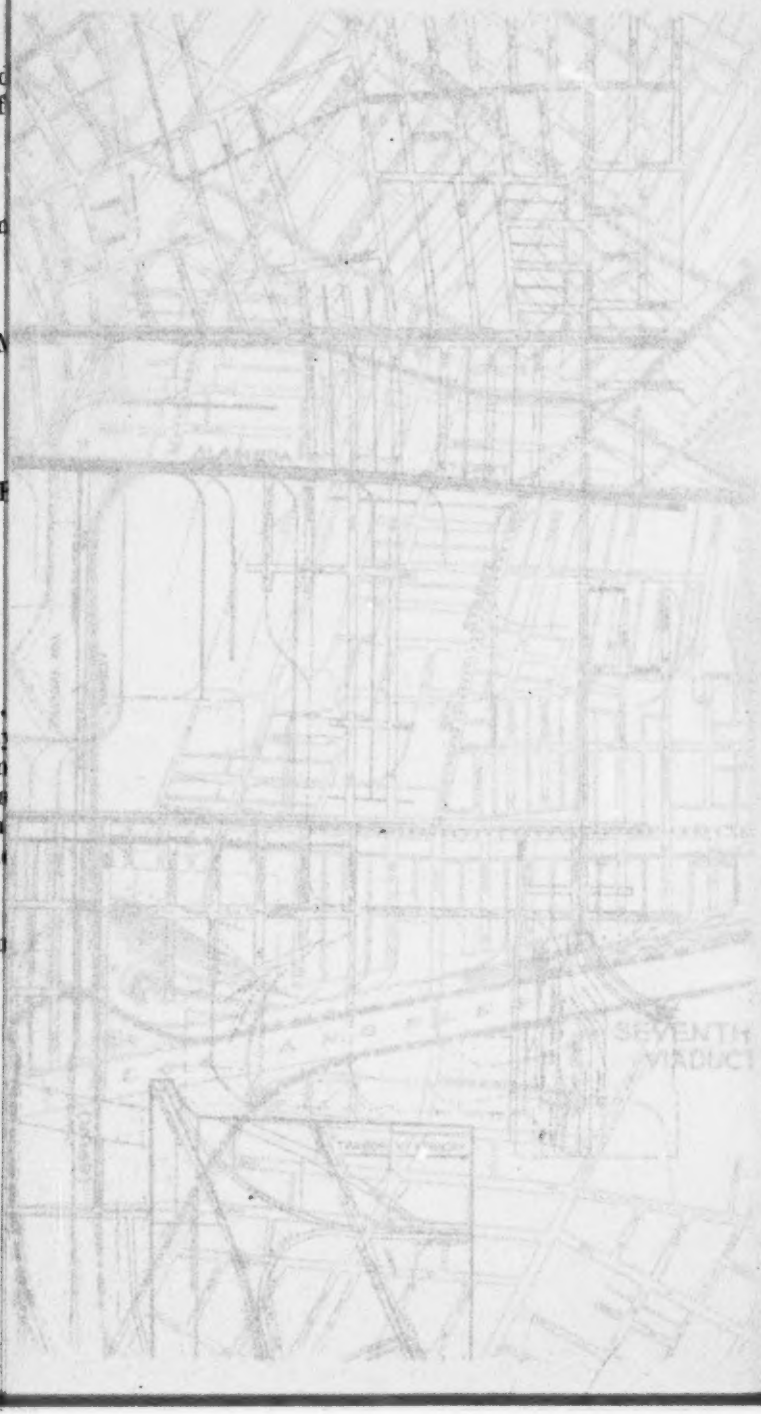

34 EXHIBIT "A."

Before the Interstate Commerce Commission

CITY OF LOS ANGELES, Complainant,

vs.

LOS ANGELES AND SALT LAKE RAILROAD COMPANY, PACIFIC Electric Railroad Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railroad Company, and Union Pacific Railroad Company, Defendants.

Complaint.

The complainant of the above named complainant respectfully shows:

I. The city of Los Angeles is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is located in the county of Los Angeles, state of California.

II. Each of said defendants is a common carrier engaged in the transportation of passengers and property by railroad, to, from and through said city of Los Angeles, in interstate and also in intrastate commerce, and each of said defendants is subject, as such common carrier, to the provisions of the "Interstate Commerce Act" as amended.

The defendants Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Railroad Company and The Atchison, To-
35 peka & Santa Fe Railway Company each owns lines of railroad and railroad terminal properties and facilities engaged in said transportation and located in the city of Los Angeles and elsewhere. The defendant Southern Pacific Company operates said lines of railroad and railroad terminal properties and facilities of said Southern Pacific Railroad Company. The defendant Union Pacific Railroad Company operates said lines of railroad and railroad terminal properties and facilities of said Los Angeles and Salt Lake Railroad Company. The defendants Pacific Electric Railway Company and The Atchison,

Topeka & Santa Fe Railway Company operates said lines of railroad and railroad terminal properties and facilities respectively owned by them, as aforesaid.

Opposite the first page of this complaint will be found a map showing the location of the lines of railroad of the defendants herein, in the city of Los Angeles, which map is marked Exhibit No. 1 and made a part hereof.

III. The railroad lines of all of said defendants (other than Pacific Electric Railway Company), within the city of Los Angeles have been constructed and are being operated at grade in a general northerly and southerly direction through said city, across many of the most important public streets of said city. Said railroad lines separate important and populous sections of the city of Los Angeles known as Boyle Heights and East Los Angeles, and also important and populous communities east of Los Angeles, from the business and residence center of the city of Los Angeles located west of said lines of railroad. They make intercommunication between the portions of the city of Los Angeles and other communities on either side of said lines of railroad, whether such communication be by rail-
36 road, or by vehicular, or pedestrian traffic, slow, diffiicult, unsafe and dangerous.

The line of railroad of said Southern Pacific Railroad Company runs in a general northerly and southerly direction longitudinally through the city of Los Angeles at grade on and along Alameda street, one of the principal thoroughfares of said city. The operation of said line of railroad on and along said Alameda street delays, hinders and makes unsafe and dangerous traffic by street cars, vehicles and pedestrians crossing said Alameda street on and along many important streets of said city. The operation of said line of railroad of the Southern Pacific Railroad Company on and along said Alameda street has long constituted and now constitutes a constant source of delay and danger to thousands of citizens of Los Angeles and eleswhere who find it necessary daily to cross said lines of railroad on Alameda street.

The line of railroad of said The Atchison, Topeka & Santa Fe Railway Company is constructed and operated at grade on and along the west bank of the Los Angeles River through the city of Los Angeles in a general north-

erly and southerly direction. The line of railroad of said Los Angeles and Salt Lake Railroad Company is constructed and operated at grade on and along the east bank of said Los Angeles River through the city of Los Angeles in a general northerly and southerly direction. Said lines of railroad of said two companies cross at grade numerous important public streets of the city of Los Angeles, along which there is at said points of crossing a very heavy daily traffic by interurban electric railroad, street car railroad, other passenger and freight vehicles, and on foot.

37 The Pacific Electric Railway Company operates a large number of electric interurban trains daily between the city of Los Angeles and important cities in the eastern portion of Los Angeles County, including Pasadena, Alhambra, San Gabriel and South Pasadena, and in so doing crosses at grade said lines of railroad of said defendants Los Angles and Salt Lake Railroad and Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, and Southern Pacific Railroad Company, within said city of Los Angeles. Said crossings are a constant menace and danger to the thousands of passengers and employees traveling daily on the line of said Pacific Electric Railway Company between the main business district of the city of Los Angeles and said cities located in the easterly portion of said Los Angeles county, and also to the passengers and employees being transported on and along said lines of railroad across which said Pacific Electric Railway Company thus operates at grade.

Each and every crossing at grade hereinbefore referred to, whether between railroad lines and public streets or between railroad lines and railroad lines, constitutes a grave and constantly increasing menace and danger to the safety of the public traveling on and along said public streets and of the passengers and employees traveling on said railroad lines in both interstate and intrastate commerce, and constitutes a constant hindrance and delay to the public traveling by railroad lines, vehicles or on foot between those portions of the city of Los Angeles and points beyond which are located on the westerly and easterly sides, respectively, of said lines of railroad. Said railroad grade crossings have been the cause of many accidents and collisions which have been destructive of the

lives and property of the people of the city of Los Angeles and visitors to that city, and also of property of
38 said defendants engaged in both interstate and intrastate commerce.

Said defendants have on numerous occasions, particularly during the course of the proceedings before the Railroad Commission of California, hereinafter referred to, publicly admitted the public menace and danger which is caused by said railroad crossings at grade and have conceded that said crossings, including particularly said crossings of the Southern Pacific Railroad Company, on and along said Alameda street, said crossings of Los Angeles and Salt Lake Railroad Company and That Atchison, Topeka & Santa Fe Railway Company on and along both banks of said Los Angeles River and said crossings between the line of Pacific Electric Railway Company and the lines of the other defendants herein, do constitute a grave and constantly increasing menace to the public safety and should be eliminated and abolished, but thus far said defendants have not eliminated or abolished said railroad grade crossings, or any thereof.

The population of the city of Los Angeles and the number of persons crossing said railroad grade crossings daily, both on and along said public streets, and as passengers and employees on said lines of the defendants herein, are increasing with great rapidity; the danger and menace of the railroad grade crossing situation hereinbefore set forth are rapidly becoming accentuated, and the necessity for relief by the elimination of said railroad grade crossings is urgent.

IV. The defendants each maintains a separate main passenger depot and passenger terminals, tracks and other facilities within the city of Los Angeles.

The passenger depot of the Los Angeles and Salt Lake Railroad Company is admittedly inadequate to serve the just and reasonable requirements of the traveling
39 Public. It was built in 1891, at an estimated cost of only $10,000.00, and is lacking in every particular necessary to satisfy the requirements of public convenience and necessity of a city of more than 750,000 population.

The passenger depot of The Atchison, Topeka & Santa Fe Railway Company was built in 1893 at an estimated cost

of $50,000.00. It now provides scant facilities for the use of passengers and does not serve the just and reasonable requirements of the traveling public.

The continued use of the passenger depot of the Southern Pacific Company does not conform to any satisfactory plan for the elimination of the dangerous railroad grade crossings on said Alameda street and elsewhere. Said depot does not conform in its location to the plan for the elimination of said dangerous railroad grade crossings required by public safety, convenience and necessity.

Each of said depots is used in both interstate and intrastate passenger traffic and each thereof is inconveniently located to meet the just and reasonable requirements of the traveling public.

V. In order to eliminate the dangerous railroad grade crossings hereinbefore referred to, to provide adequate and sufficient passenger station facilities for the Southern Pacific Railroad Company, the Southern Pacific Company, the Los Angeles and Salt Lake Railroad Company, the Union Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company in the city of Los Angeles, to promote the security, convenience and necessity of the passengers and employees of said defendants on said lines of railroad and of the public generally, and to secure adequate service and facilities for the performance by said defendants in this paragraph mentioned, and each of them, of their obligations as common carriers, it is necessary, and the public safety, convenience and necessity require, that a union passenger station and buildings incidental thereto be erected by said defendants in this paragraph specified, in the city of Los Angeles, and that in connection therewith said defendants make such improvements and changes in their existing facilities and arrange for such joint or other use of tracks or terminal facilities now constructed or to be constructed within the city of Los Angeles as may be reasonably necessary and incidental to the construction and use of said union passenger station and the elimination or abolition of such railroad grade crossings, and that the operation of said line of railroad of Southern Pacific Railroad Company on and along said Alameda street, between College street

and Fifteenth street, inclusive, in the city of Los Angeles, be thereafter abandoned, except for local freight switching.

In and by a proceedings known as Application No. 3346, heretofore filed by said defendants Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company with the Railroad Commission of California, to which application more particular reference will hereinafter be made, said defendants conceded and urged the desirability of the construction by them of a union passenger station and tracks and other facilities incidental to and in connection therewith in the city of Los Angeles, and offered to expend approximately $17,000,000.00 in such construction, but said application did not contemplate that The Atchison, Topeka & Santa Fe Railway Company should be admitted to the use of said union passenger station and facilities and the location of said proposed partial union passenger station was
41 not such as would best promote the public interest in the elimination of said dangerous railroad grade crossings in the city of Los Angeles or serve the comfort, convenience and safety of the traveling public.

VI. If no unified plan for the elimination of said dangerous railroad grade crossings and the establishment of satisfactory and appropriate passenger depot and other facilities in the city of Los Angeles should be made effective it would nevertheless be necessary for the defendants to expend individually for said purpose many millions of dollars in the immediate future.

It is greatly in the public interest and in the interest of the defendants themselves that these expenditures, instead of being made in a competitive and largely wasteful manner, each carrier seeking primarily to advance its own competitive interest or the interests of itself and its particular associates, were made in a unified manner in pursuance of a broad plan, the object of which would be to provide for the elimination and abolition of said dangerous railroad grade crossings and the establishment of adequate and satisfactory passenger terminal facilities in the city of Los Angeles in such a way as to avoid duplicate investments and operating expenses, prevent wasteful expenditures and serve the public interest.

VII. (*a*) During July, 1916, a number of civic organizations of the city of Los Angeles filed with the Railroad Commission of California formal complaints against Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and The Atchison, Topeka & Santa Fe Railway Company, asking that the Railroad Commission investigate the entire railroad situation in the city of Los
42 Angeles and then make its order for the elimination and abolition of the dangerous railroad grade crossings in the city of Los Angeles, and for other relief. The Municipal League of Los Angeles, the first of these complainants, alleged, in part, that in order to relieve the people of the city of Los Angeles from the danger, damage and inconvenience of the existing numerous railroad grade crossings and other conditions complained of, it will be necessary to concentrate the various tracks of the defendants in said proceedings and to provide for the use by them of a central or union passenger station. These complaints were followed by other formal complaints, including complaints by several municipalities in the eastern portion of Los Angeles county, who also made Pacific Electric Railway Company a party defendant. In August, 1916, the Railroad Commission consolidated all of said complaints for hearing and decision.

(*b*) The question of the Railroad Commission's jurisdiction having been formally raised, the Railroad Commission held a public hearing at which it heard argument on that question. Thereafter, on October 21, 1916, the Commission made and filed its Decision No. 3805, holding that it had jurisdiction, but dismissed the proceedings so that by appropriate proceedings before the Supreme Court of California, the Commission's jurisdiction might be passed upon authoritatively before a very considerable amount of time and labor and also thousands of dollars of both public and private funds should have been expended in studies and investigations. While the railroad companies filed formal pleadings challenging the Railroad Commission's jurisdiction, they advised the Railroad Commission in open hearing that they were doing so only to have the question of the Railroad Commission's jurisdiction authoritatively and promptly determined, and they stated that it was their

contention that the Railroad Commission had com-
43 plete jurisdiction, both as to the grade crossing elimination and the union passenger depot construction.

The entire matter was thereupon taken to the Supreme Court of California by two writs of mandamus. The Supreme Court thereafter, on June 11, 1917, made and filed its decision upholding the jurisdiction of the Railroad Commission and directing that a writ of mandate issue directing the Railroad Commission to consider and determine, upon the merits, the complaints hereinbefore referred to, (*Civic Center Association* v. *Railroad Commission,* 175 Cal. 441.)

(*c*) The Railroad Commission of California thereupon proceeded to hold hearings and take testimony in said proceedings, extending throughout the latter half of 1917, 1918, 1919, 1920 and the early portion of 1921. The Commission directed its own engineering department to make an independent investigation, the results of which are embraced in an exhaustive report which was later introduced in evidence and marked Railroad Commission's Exhibit No. 1. The city of Los Angeles contributed $20,000.00 of the public funds of the city toward the expenses of said investigation and report and the Railroad Commission contributed a much larger sum of the public funds of the state of California. Thereafter, on April 26, 1921, the Railroad Commission made its Decision No. 8901, reviewing exhaustively the entire matter, and ordering the defendants railroad companies to file plans for the elimination of specified dangerous railroad grade crossings along the Los Angeles River, to file plans for the erection of a union passenger station on a general location near the Plaza in Los Angeles, and on the completion thereof to remove all passenger traffic and all freight traffic except local freight switching from a desig-
nated portion of Alameda street in the city of Los
44 Angeles.

A copy of said Decision No. 8901 is hereto attached, marked Exhibit No. 2, and made a part hereof.

(*d*) Subsequent to said decision of the Supreme Court of California of June 11, 1917, and during the course of the hearings before the Railroad Commision on the merits, Southern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company

filed with the Railroad Commission of California their petition in Application No. 3346, invoking the jurisdiction of said Commission and asking its approval to the execution of a plan by which said railroads would convert the Arcade Depot of the Southern Pacific Railroad Company at Fifth and Central Streets in the city of Los Angeles into a union passenger terminal for themselves and the Pacific Electric Railway Company (but not for the Atchison, Topeka & Santa Fe Railway Company), in such a way as to accomplish two main purposes—first, to elimniate the Southern Pacific Company's passenger train operations and all of its freight train operations except local freight switching from Alameda street, thereby curing the dangerous railroad grade crossing, situations on that street; and second, to enable Los Angeles and Salt Lake Railroad Company to lease its admittedly unsatisfactory present passenger depot on the eastern bank of the Los Angeles River and utilize the more satisfactory Arcade side. Under this plan, the Southern Pacific Company's passenger and through freight trains would be operated, over the tracks of the Los Angeles and Salt Lake Railroad Company along the east bank of the Los Angeles River and the passenger trains of the Southern Pacific Company would be brought into the Arcade Depot by means of a long high trestle from the Los Angeles River to said Arcade Depot. Representatives of said carriers testified before the Railroad Commission that they stood ready to expend ap-
45 proximately $17,000,000.00 in the execution of said plan (which constituted only a partial and incomplete development), if permitted so to do by the Railroad Commission. Said application was by consent of all parties consolidated with the earlier proceedings for hearing and decision and was subsequently dismissed by the Railroad Commission. The reasons why said plan was not deemed to be in the public interest are set forth at length in said report of the Railroad Commission's Engineering Department, hereinbefore referred to, and in Decisions Nos. 8901 and 9838 of the Railroad Commission, herein referred to.

(*e*) Until said Decision No. 8901 was rendered by the Railroad Commission, the city of Los Angeles did not take any position on the disputed question as to the necessity for or the site of a union passenger depot. The city's

position was that this question should be decided by the Railroad Commission, a disinterested, expert tribunal, peculiarly well qualified and equipped to ascertain all the relevant facts and to pass a disinterested, competent judgment thereon. However, when the Railroad Commission made its said Decision No. 8901, the city of Los Angeles, by formal resolution of its city council, approved and endorsed said decision and accepted the same as determinative of the disputed issues of fact, and the city thereafter appeared before the Railroad Commission and before the Supreme Court of California in support of the Railroad Commission's findings and order. It is the city's position at this time, and an order is asked from this Commission accordingly, that an order be made by this Commission for the elimination of the railroad grade crossings herein referred to and the construction of a union passenger station in substantially the manner and by substantially the means specified by the Railroad Commission of California,
46 for the reason that the Railroad Commission's order, if carried into effect, will satisfy the city's complaint.

(*f*) The railroad companies, defendants in said proceedings, petitioned to the Rairoad Commission for a hearing from its said Decision No. 8901. Argument on said rehearing was thereafter held, and thereafter, on December 6, 1921, after a view of the premises, the Railroad Commission made its Decision No. 9838, modifying in certain respects its former decision, to meet objections of the railroads, but affirming the general conclusions set forth by it in said Decision No. 8901. A copy of said Decision No. 9838 is hereto attached, marked Exhibit No. 3, and made a part hereof.

The Railroad Commission's findings of fact in said Decision No. 9838 were as follows:

1. That the existing grade crossings of the Southern Pacific Company's tracks on Alameda street, at College street, North Main street, Macy street, Alice street, Commercial street, Jackson street, East First street, East Second street, East Third street, East Fourth street, East Sixth Street, Industrial street, East Seventh street, East Eighth street, East Ninth street, East Fourteenth street and East Fifteenth street, in the city of Los Angeles, and certain

existing grade crossings adjacent to the Los Angeles River in the city of Los Angeles, to-wit: the crossing of Macy street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Alice street and of the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and
47 Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, and the crossing of Seventh street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company are unsafe, and the continued use thereof for the movement of trains by the said respective carriers using such crossings endangers the employees of said carriers and the public generally; and that public interest, safety, convenience and necessity require that all such dangerous conditions at said crossings be eliminated.

2. That the existing passenger stations of The Atchison, Topeka and Santa Fe Railway Company at East Second street and Santa Fe avenue in the city of Los Angeles, and of the Los Angeles and Salt Lake Railroad Company at East First street near the east bank of the Los Angeles River in the city of Los Angeles, are improper, inadequate and insufficient to promote the security, convenience and necessity of the public. That the existing depot of the Southern Pacific Company at Fifth and Alameda streets in the city of Los Angeles does not conform to the plan for the elimination of said dangerous railroad grade crossings in the city of Los Angeles herein found to be required by public safety, convenience and necessity.

3. That in order to eliminate the dangerous grade crossings hereinabove enumerated and to provide adequate and sufficient passenger stations for the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Com-
48 pany in the city of Los Angeles, for the promotion of the security, convenience and necessity of their employees and that of the public generally, and to secure adequate service and facilities for the performance by the said defendants, and each of them, of their public utility functions in the state of California, it is necessary, and

the public safety, convenience and necessity require that a new structure or structures, to-wit, a union passenger station and buildings incidental thereto, be erected by the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and in connection therewith such improvements and changes in existing facilities of said defendants be made by said defendants as may be reasonably necessary and incidental to the use of said union passenger station, and that all railroad traffic be eliminated from Alameda street, between College street and Fifteenth street, inclusive, in the city of Los Angeles, except local freight switching. That public safety, convenience and necessity require that a separation of grades be made by the defendants specified in the order herein at the said crossings adjacent to the Los Angeles River in the city of Los Angeles, to-wit, the crossing Aliso street and the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Macy
49 street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, and the crossing of East Seventh street by the tracks of The Atchison, Topeka and Santa Fe Railway Compay and by the tracks of the Los Angeles and Salt Lake Railroad Company.

4. That public safety, convenience and necessity require that the location and the site of the union passenger station referred to in paragraph three of these findings be within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River.

The Railroad Commission's order in said Decision No. 9838 was as follows:

1. That the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger sta-

tion thereon and buildings incidental thereto in the city of Los Angeles and to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said passenger depot.

50 2. That the site of the union passenger station referred to in paragraph one of this order shall be within that portion of the city of Los Angeles bounded by Commercial street, North Main Street, Redondo street, Alhambra avenue and the Los Angeles River.

3. That said Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, within six (6) months from the effective date hereof, file with this Commission, for its approval, a general plan or plans, with the necessary profile or profiles, and general and detailed drawings, of a union passenger station located on said site, together with all additions to, extensions of, improvements and changes in existing railroad facilities as are reasonably necessary and incidental to the use of said union passenger station; also estimates of cost of construction of said union passenger station, together with said necessary facilities and additions to, extensions of, improvements and changes in existing railroad facilities; also estimates of damages and of salvage; also description and plans of the necessary temporary operating arrangements during the period of the transition pending the completion of said new union passenger station.

4. That at the time of the filing of the plans referred to in paragraph three of this order, the said Southern

51 Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall file with this Commission a statement of the proportionate expense which each of said defendants is to bear for the procurement of said site and the construction of said union passenger station and said necessary facilities and changes, additions, extensions and improvements to existing facilities; and in the event said defendants shall fail to file said statement, showing the proportion of the expense which each of them, is to bear, as herein required, this Commission will proceed to fix and apportion said expense to each of said defendants,

5. That upon the filing of the plans referred to in paragraph three of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon the construction of said union passenger station shall commence within ninety (90) days after the approval by the Commission of said plans and shall be completed within three (3) years from that date, unless for good cause an extension of time is granted.

6. The defendants, Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall proceed to the construction of such viaducts, work and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public streets at Macy and East Seventh streets in the city of Los Angeles.

52 7. That said The Atchison, Topeka and Santa Fe Railroad Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans providing for grade separations at said Macy and Seventh streets; also profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of the cost of construction for each viaduct and for incidental expenditures and for damages.

8. That at the time of filing the plans referred to in paragraph seven of this order, the said The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, and the city of Los Angeles shall file with this Commission a statement showing the proportionate expense which each of said defendants and said city is to bear for the construction of said viaducts and other necessary works for the separation of grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of such structure and works shall be appointed to each of said defendants and said city by this Commission.

9. That upon the filing of the plans referred to in paragraph seven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said viaducts, structures and works for the separation of grades at said Macy street and Seventh street shall commence
53 within thirty (30) days after the approval by the Commission of said plans, and shall be completed within two (2) years from that date, unless for good cause an extension of time is granted.

10. That defendants, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and all of them, shall proceed to the construction of such viaducts, works and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public streets at Aliso street, city of Los Angeles, and the tracks of the Pacific Electric Railway Company from the tracks of said other defendants.

11. That said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans, providing for said grade separations at Aliso street; also profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of cost of construction for each viaduct and for incidental expenditures and for damages.

12. That at the time of filing the plans referred to in paragraph eleven of this order, the said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, and the city of Los Angeles, shall file with this Commission a statement
54 showing the proportionate expense which each of said viaducts and other necessary works for the separation of said grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of

such structures and work shall be apportioned to each of said defendants and said city by this Commission.

13. That upon the filing of the plans referred to in paragraph eleven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said necessary viaducts, structures and works for the separation of grades at said Aliso street shall commence within thirty (30) days after the approval by the Commission of said plans and shall be completed within two (2) years from said date, unless for good cause an extension of time is granted.

14. That upon the completion of the union passenger terminal, as required by this order, the defendant, Southern Pacific Company, shall discontinue the operation of trains on Alameda street, between College street and Fifteenth street, inclusive, in the city of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order."

Southern Pacific Railroad Company, Southern Pacific Company, Los Angeles and Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway
55 Company thereafter took the Railroad Commission's said order to the Supreme Court of California by writ of *certiorari*, which court, on December 19, 1922, made its order annulling the Railroad Commission's order. A copy of the decision of the Supreme Court is hereto attached, marked Exhibit No. 4, and made a part hereof.

The last paragraph of said decision reads as follows:

"From the foregoing excerpts from the act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceed-

ings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

VIII. The injury and menace to the life and property and the discomfort, inconvenience and delays caused by the conditions hereinbefore set forth are constantly increasing with the growth of the city of Los Angeles and the business of the defendants, and the barrier between the business center of the defendants, and the barrier between the business center of the city and the districts to the east thereof is constantly becoming more intolerable.

The safety, necessity, comfort and convenience of the public who travel on and along the public streets of the city of Los Angeles across said dangerous railroad grade crossings, of the public who as passengers and employees
56 of the defendants travel on their lines of railroad in intrastate and in interstate commerce over said dangerous railroad grade crossings and of the public who utilize the passenger station facilities of the defendants in the city of Los Angeles urgently require that this Commission grant the relief herein prayed for.

The city of Los Angeles stands ready to grant such franchises or permits and to enact ordinances for the opening or closing of such public streets, if any, as may be necessary to make effective the order prayed for in this proceeding.

Wherefore, complainant, the city of Los Angeles, prays:

(1) That the defendants may be severally required to answer the charges herein.

(2) That after due hearing and investigation an order or orders be made commending said defendants, as their interests may respectively appear;

(*a*) To eliminate and abandon said dangerous railroad grade crossings of Southern Pacific Railroad Company on Alameda street in said city from College street to East Fifteenth street, inclusive;

(*b*) To eliminate and abandon the following three dangerous railroad grade crossings adjacent to the Los Angeles River in said city, viz:

(1) The crossing of Macy street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and the tracks of Los Angeles and Salt Lake Railroad Company; (2) the crossing of Aliso street and the tracks of Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and the tracks of Los Angeles and Salt Lake Railroad Company, and (3) the crossing of Seventh street by the tracks of
The Atchison, Topeka and Santa Fe Railway Com-
57 pany and tracks of Los Angeles and Salt Lake Railroad Company;

(*c*) To eliminate and abandon such other dangerous railroad grade crossing of the defendants or any thereof, hereinbefore referred to in said city, as may be eliminated in conjunction with and as a part of the plan outlined in said decision No. 9838 of the Railroad Commission of California;

(*d*) To construct and thereafter operate and use a union passenger depot and appurtenance on a site located within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, and to acquire such land, if any, as may be necessary for said purpose;

(*e*) To abandon the operation of said main line tracks of Southern Pacific Railroad Company on said Alameda street from College street to East Fifteenth street, inclusive, for the operation of passenger trains and also freight trains except local freight switching; and

(*f*) To construct or acquire such structures, facilities, tracks and other property, to make such extensions or abandonments of railroad lines or other facilities or of the operation thereof, and to arrange for such joint or other use of tracks or terminal facilities now constructed or to be constructed, within the city of Los Angeles ,as may be reasonably necessary and incidental as a part of and in furtherance of the matters hereinbefore in this prayer specified, or any thereof; and

(3) That this Commission make such other or further order or orders in furtherance of the relief herein asked

for as it may find to be just and equitable and in the public interest.

58 Dated at Los Angeles, California, this — day of March, 1923.

CITY OF LOS ANGELES,
By JESS E. STEPHENS,
City Attorney,
City Hall, Los Angeles, Cal.,
By MILTON BRYON,
Deputy City Attorney,
City Hall, Los Angeles, Cal.

MAX THELEN,
Of Counsel,
Balfour Bldg., San Francisco, Cal.

INTERSTATE COMMERCE COMMISSION

LOS ANGELES PASSENGER TERMINAL CASES

No. 14778[1]

CITY OF LOS ANGELES *v.* LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.

Submitted February 27, 1925. Decided July 6, 1925

1. Public convenience and necessity found to permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.
2. Public convenience and necessity found not to require the construction of new or extension of existing lines of railroad in the city of Los Angeles, Calif., by the Southern Pacific and the Los Angeles & Salt Lake, as described in the application in Finance Docket No. 3569. Application denied.
3. The extension by defendants of their respective main lines of steam railroad so as to reach and serve such union passenger station and terminal as they may construct and establish in a described portion of the city of Los Angeles, Calif., in accordance with a lawful order of the Railroad Commission of California, and the extension of such main lines to provide for rearrangement of their respective passenger and freight routes incidental to the convenient and proper operation of such union station and terminal, found reasonably required in the interest of public convenience and necessity, and the expense involved therein found not to impair the ability of said defendants to perform their respective duties to the public.
4. In addition to the abandonment of train service on Alameda Street as above authorized, public convenience and necessity found to permit the abandonment by defendants of such portions of their lines of steam railroad, or of all or any portion of the interstate service thereon, as may be incidental to the rearrangement of routes, tracks, and terminal facilities necessitated by the establishment of a union passenger station and terminal as indicated.
5. Joint use by defendant steam railroads of such main-line tracks of each other as may be incidental, and necessary or convenient, to the proper operation of a union passenger depot and terminal established as above indicated found to be in the public interest and to be practicable, without substantially impairing the ability of the carrier or carriers owning

[1] This report also embraces Finance Docket No. 3564, In the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company for Certificate of Public Convenience and Necessity, and Finance Docket No. 3569, In the Matter of the Application of Southern Pacific Company, Southern Pacific Railroad Company, and the Los Angeles & Salt Lake Railroad Company for Certificate of Public Convenience and Necessity.

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or entitled to the enjoyment of such track or tracks to handle its or their own business.

6. Jurisdiction of No. 14778 and Finance Docket No. 3556 retained for the purpose of making such further findings and orders and issuing such certificates as the record warrants.

Jess E. Stephens, *Max Thelen*, and *Milton Bryan* for city of Los Angeles; and *Hugh Gordon*, *Carl I. Wheat*, and *Woodward M. Taylor* for Railroad Commission of the State of California.

William W. Clary for Central Development Association; *Gurney E. Newlin* for Central Development Association, Business Men's Cooperative Association, Lincoln Heights Board of Trade, Broadway Improvement Association, North Main Street Improvement Association, and Greater Los Angeles Improvement Council, interveners.

C. W. Durbrow for Southern Pacific Company and Southern Pacific Railroad Company; *A. S. Halsted*, *Fred E. Pettit, jr.*, *H. A. Scandrett*, and *J. M. Souby* for Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company; *E. W. Camp*, *T. J. Norton*, *F. E. Andrews*, and *M. W. Reed* for Atchison, Topeka & Santa Fe Railway Company; and *Frank Karr* for Pacific Electric Railway Company.

Spencer Thorpe for W. H. Daum and *George H. Dunlop* for Municipal League of Los Angeles, interveners.

Report of the Commission

Aitchison, *Chairman:*

The city of Los Angeles is a municipal corporation of the State of California and complainant in No. 14778. Defendants are railroads engaged in interstate transportation of passengers and freight, and enter Los Angeles. The city asks that the commission direct defendants (1) to construct, operate, and use a union passenger depot within a defined area in that city, and to acquire land necessary therefor; (2) to abandon main-line passenger and freight service, except local freight switching, on and along a portion of Alameda Street in Los Angeles; (3) to eliminate and abandon certain railroad grade crossings in the city; and (4) to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within the city of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. The only relief sought against defendant Pacific Electric Railway is the participation by it in the expense of constructing a viaduct at Aliso Street in Los Angeles to eliminate grade crossings on both banks of the Los Angeles River.

In Finance Docket No. 3556 the Southern Pacific Company and its lessor, Southern Pacific Railroad Company, ask for a certificate of public convenience and necessity authorizing the abandonment of 0.15 mile of main-line track, and the abandonment of operation of passenger and freight train service (except freight switching service) on 6.6 miles of main-line track on Alameda Street. In Finance Docket No. 3569 the Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company ask for a certificate of public convenience and necessity authorizing applicants to construct certain new main lines and to extend their existing main lines of railroad in Los Angeles so as to permit the joint use and operation by these applicants of the existing passenger station of the Southern Pacific at Fifth Street and Central Avenue, and so as to permit the removal of Southern Pacific passenger and freight trains, except industrial switching, from Alameda Street. The Railroad Commission of the State of California appeared in support of the complaint, and with the city intervened in opposition to the relief sought by applicants. There were other interventions for or against the complaint.

HISTORY OF PROCEEDINGS

The matters involved originated in complaints filed with the Railroad Commission of California in 1916, which asked that body to order the elimination of certain grade crossings in Los Angeles. At least one complaint sought to require the three steam lines to provide and use a union passenger station. On June 11, 1917, the Supreme Court of California upheld the jurisdiction of the railroad commission to order the separation of grades, which had been questioned, and directed it to consider and determine the complaints upon the merits. *Civil Center Association* v. *Railroad Commission*, 175 Cal. 441.

The jurisdiction of the railroad commission to enter an order for a union station was not then questioned. Following exhaustive investigation by its engineers, and after numerous hearings, the railroad commission on April 26, 1921, made its decision, known as No. 8901. 19 Cal. R. R. Com. 740. The railroad commission ordered the defendant railroad companies to file plans for the elimination of specified railroad grade crossings along the Los Angeles River, and for the erection of a union passenger station at some site within a defined area in the vicinity of the Plaza in Los Angeles; and upon the completion thereof to remove all passenger traffic and all freight traffic except local-freight switching from a designated portion of Alameda Street. The Plaza is a small circular park, which marks

the center of the original pueblo of Los Angeles. During the hearings which culminated in the order just described, applicants sought the railroad commission's approval of the execution of a plan generally similar to that now proposed in our Finance Dockets No. 3556 and No. 3569. This application was consolidated with the earlier proceedings mentioned for hearing and decision, and was subsequently dismissed by the railroad commission.

Subsequent to the issuance of Decision No. 8901, the city council of the city of Los Angeles, which had taken no position as to the necessity of a union station, formally approved, endorsed, and accepted the decision as determinative, and in the proceedings which followed appeared in support of the railroad commission's findings and order.

Following a rehearing of Decision No. 8901, had on petition of the railroad companies, the railroad commission on December 6, 1921, issued its Decision No. 9838 modifying the previous conclusions. 20 Cal. R. R. Com. 937. Briefly, the later decision ordered the carrier to proceed to procure sufficient grounds for a union passenger station within a defined area, to prepare and submit plans for such union station, passenger terminal, and necessary facilities, and upon approval of the plans by the commission, to proceed with the construction of such station and terminal. Similar orders were included for the elimination of specified grade crossings.

Each of the three steam lines thereupon took the railroad commission's decision and order to the Supreme Court of California. On December 19, 1922, that court in *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission*, 190 Cal. 214, held that the transportation act, 1920, vested full power and authority over the matter of union terminal depot facilities of interstate carriers by railroad in the Interstate Commerce Commission, and divested the Railroad Commission of California of the jurisdiction sought by it to be exercised in the proceedings and order presented for review. Upon petition of the railroad commission, the Supreme Court of the United States granted writs of certiorari in these matters.

The City of Los Angeles thereupon filed with this commission the complaint in No. 14778. Hearing thereon was had in July, 1923, and a complete transcript of the testimony before the state commission received as a part of the evidence. Argument and submission was deferred until the decision of the Supreme Court of the United States. That body on April 7, 1924, affirmed the judgment of the Supreme Court of California, and held that a certificate of public

convenience and necessity from this commission was necessary in the construction of a new interstate union station, involving a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals, such as the state commission proposed to require. *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331. In concluding, the Supreme Court used the following language:

> We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.
>
> For the reasons given we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act,[1] the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

Subsequent to the issuance of this decision the Southern Pacific and the Salt Lake filed the above-mentioned applications in Finance Dockets No. 3556 and 3569. These applications were consolidated with No. 14778, and the evidence previously received in the latter case made available in the finance proceedings also. Hearing of the consolidated cases was had in June, 1924.

JURISDICTION

Jurisdictional questions arise at the outset. Defendants deny our authority to require the construction of a union station as sought by the complaint in No. 14778. Complainant contends that Congress has reposed that authority with us. All parties concede that if we have the power to require the construction of a union station, it has come in the transportation act, 1920. Prior to that enactment such power was clearly in the States. In numerous instances States had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such cases, where the facts reasonably come within the legislative enabling act, the State courts have upheld orders of the State commissions. The State courts have held the order could not be defeated (1) by showing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other pas-

[1] These are paragraphs similarly numbered, now a part of section 1 of the interstate commerce act.

senger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad.[3]

Careful study of the interstate commerce act convinces us that Congress has not conferred upon us authority to require carriers to construct union passenger stations under conditions such as are here present. We are not considering a case where prejudice or discrimination is involved. There is no language in the act apt for the purpose. The provision in section 3, paragraph (4) for joint use of terminal facilities expressly covers only facilities existing when the requirement is made. The Supreme Court concedes this in *R. R. Comm.* v. *Southern Pacific Co.*, *supra*, and as warrant for the control which it states we have over the larger and more important new terminal projects refers directly (page 344) to paragraphs (18) to (21) of section 1. Paragraph (18) forbids the extension, construction, acquisition, operation, or abandonment of any line of railroad by any carrier subject to the act without first securing from us an appropriate certificate of convenience and necessity. Paragraph (19) provides for the procedure upon application for certificate, and paragraph (20) for the issuance of certificates and the enforcement of paragraphs (18) and (19). Paragraph (21) empowers us to authorize or require a carrier by railroad subject to the act to provide itself with safe and adequate facilities for performing as a common carrier its car service, and to extend its line or lines. The same paragraph also provides a penalty for noncompliance with orders made by us in pursuance thereof.

The term "car service" as used in the act relates to *vehicles* used in the transportation of *property*. The authority to require a carrier to extend its line may include authority to require it to construct stations necessary and incidental thereto. That question is not now before us. But assuming such authority, we conclude that paragraph (21) does not empower us to order the construction of a union passenger station where, as here, the station would be the principal thing and the extension of lines the incident.

Complainant argues that we have power to make the order prayed for under paragraph (3) of section 3, which provides, in part, that

[3] Cases in point are *State ex rel. Railroad Commissioners* v. *Atlantic Coast Line R. Co.*, 67 Fla. 441; *Griffin* v. *Southern Ry. Co.*, 150 N. C. 312; *Corporation Commission* v. *Seaboard Air Line Ry. Co.*, 161 N. C. 270; *North Carolina Corporation Com'n.* v. *Southern Ry. Co.*, 165 N. C. 435; *Missouri, K. & T. Ry. Co.* v. *State*, 38 Okl. 401; *Gulf, Colorado & S. F. Ry. Co.* v. *State* (Tex. Civ. App.), 167 S. W. 192; *State* v. *St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 199 S. W. 529; *Railroad Commission of Alabama* v. *Northern Alabama Ry. Co.*, 182 Ala. 557; *Railroad Commission of Alabama* v. *Alabama Great Southern Ry. Co.*, 185 Ala. 354; *Mayor and Aldermen of Worcester* v. *Norwich & Worcester Railroad Co.*, 109 Mass. 103; *State* v. *St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491; *Wisconsin, Minnesota & Pacific Co.* v. *Jacobson*, 179 U. S. 287, 302 (switch connection); *Missouri, O. & G. Ry. Co.* v. *State*, 29 Okl. 640; *Chicago, R. I. & Pac. Ry. Co.* v. *State*, 90 Okl. 173.

carriers "shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, * * *." Assuming that this provision makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would not be reasonable and proper, we must still look elsewhere for authority to require them to provide such facilities. Such authority is necessarily different from the right to award damages for violation of provisions of the act.

If recourse be had to our duty under section 12 to enforce the provisions of the act, or to our power under section 15 to determine and prescribe what "practice" in lieu of that found in violation of the act will thereafter be just, fair, and reasonable, we are met by the decision of the Supreme Court in *United States* v. *Pennsylvania R. R. Co.*, 242 U. S. 208. The case arose before the transportation act, 1920, and does not involve any additions or changes in our jurisdiction made by that act. In the case under review our order required defendant to provide and furnish tank cars for the interstate shipment of oil from certain refineries. In affirming the judgment of the lower court enjoining our order the Supreme Court particularly referred to section 12 and stated that it was the duty of carriers both under the original act to regulate commerce of 1887 and the amendment of 1906 to furnish the instrumentalities of transportation, but indicated that jurisdiction to enforce the duty was in the courts and not in us (p. 227).

The court especially referred to the word "practices" as used in section 15 of the act, and to the contention that the neglect to provide or the refusal to furnish tank cars was an unlawful "practice," the discontinuance of which we could require. The court concluded that the collocation of the term with "classifications" and "regulations" was intended to confine it to acts or conduct having the same purpose as its associates, and that it was not to be understood in the broad sense contended. The court noted that a contrary conclusion would apparently give us power to order enlargement of terminal facilities, increase in the number of locomotives, and extension of tracks or branches. After stating that if Congress had intended such consequence "it would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and with notice and time for accommodation to it," the court said:

> It is difficult to particularize all that the ruling of the Commission implies of power. What of omission or commission in the carrier's relation to the

public may not be said to be a practice or practices in the broad sense attempted to be given to those words? A railroad's powers are its duties, bearing, of course, obligations; and all of them by the asserted construction are swept under the jurisdiction of the Commission—so swept by a single word, not of itself apposite, and determined besides, by its association, against the contention. This was apparent to the dissenting commissioners and repelled their concurrence. Well might they have recoiled from going to such extreme upon doubtful implication and have been impelled to declare as they did declare that if such power was given it logically and necessarily extended to every facility of transportation.

In the *Selma Station Case, North Carolina Corporation Com'n* v. *Southern Ry. Co., supra*, the Supreme Court of North Carolina considered the effect of the passage of the transportation act upon an order theretofore entered by the corporation commission requiring two railroad companies to erect a joint station at a junction of their roads. In deciding in favor of the validity of the State commission's order the court, at page 459, said in part:[4]

We have examined the act of 1920 carefully, and we do not find any provision therein which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations. It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The

[4] Further in considering the intent of Congress as expressed in the statute, the opinion proceeds:

"While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record November 15, 1919, p. 9067):

"'Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission.'

"The purpose of this amendment, as explained by Congressman McClintic (pages 9067, 9068) was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the government during the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

"'Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the state commissions, and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.'

"Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected, Congressional Record, November 15, 1919, p. 9071. This would seem to indicate that the Congress saw fit to leave the federal commission without jurisdiction, understanding that the matter of union stations would continue within the jurisdiction of the state commissions."

right of the state, then, to act in this particular is expressly preserved to it by Transportation Act of 1920, page 402, subsec. 17 (41 Stat. at Large, p. 477) as follows: "*Provided, however*, That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just, and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

These conclusions are strengthened by scrutiny of the opinion of the Supreme Court in *R. R. Comm.* v. *Southern Pac. Co. supra*, and which seems to determine the extent to which action by us under the provisions of the transportation act is necessary in such instances as that now presented.

In referring to the construction of new union passenger terminals which require the expropriation by carriers of property of third persons, the expression of the Supreme Court (italics ours) is that "*means of control* over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of section 402." After stating the substance of those paragraphs, the court continues: "such a certificate is, we think, necessary in the construction of a new interstate union station *which involves a substantial and expensive extension of the main tracks or lines* of interstate carriers who theretofore have maintained separate terminals." The court then makes clear that the paragraphs mentioned include the extension of new main track for the purpose of rearranging terminals, and continues:

> One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of paragraph 17, section 402 of the Transportation Act shows:
>
> "That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."
>
> But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

The court then notes the findings prerequisite to the issuance by us of a certificate for the extension of lines. It comments on the important changes and the considerable expense involved in providing a union station in Los Angeles, and adds:

> We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that no question of discrimination or preference is presented here; and that under the issue framed in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants. With respect to the remaining issues before us, we are authorized to find (1) whether the present or future public convenience and necessity permit of the proposed abandonments of line, (2) whether the proposed extensions of line are reasonably required in the interest of public convenience and necessity, and whether the expense involved therein will impair the ability of defendants to perform their duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carrier, as would be necessary if a new union passenger terminal were established in the Plaza area, is in the public interest and practicable, without substantially impairing the ability of the owning carrier to handle its own business. With these issues in mind we will examine the evidence.

PHYSICAL SITUATION

A somewhat detailed description of the physical and topographic situation is necessary, and will be set out as Appendix 1 to this report. The places specified in this report are within California, except as otherwise stated; and the streets and highways referred to are within Los Angeles except as may be distinctly stated otherwise.

GRADE CROSSINGS

Alameda Street is the principal north and south street through the industrial section of Los Angeles. The presence on that street for practically its whole length of the Southern Pacific double-track main line at grade results in a grade-crossing situation which all parties agree is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west urban traffic.

The plans here presented for our approval by both complainants and the carriers provide for the removal of all train service from Alameda Street except local freight switching for industries along or reached by that street, which constitutes about 3 per cent of the present freight traffic. In accomplishing this object, complainant's plan would provide for the abandonment of the present Arcade station of the Southern Pacific and for the erection of a new union passenger station at another location. Under the plan of the Salt Lake and Southern Pacific the Arcade station would be converted into a joint station with the Salt Lake, to be reached from the east bank of the river over a viaduct extending west across the river and industrial section to the Sixth Street end of the station.

In addition to the crossings of Macy and Aliso Streets at grade by the Santa Fe detailed in the appendix, that carrier similarly crosses at grade North Main, Seventh, and Ninth Streets on the west bank of the river. Seventh Street is a particularly important east and west thoroughfare. On the east bank of the river the Salt Lake crosses at grade all five of the streets named. At present there are viaducts across the river and river-bank tracks at North Broadway, North Spring, First, and Fourth Streets, but the North Spring Street and First Street viaducts are not adequately constructed and will soon require replacement or removal.

The report of the railroad commission's engineers recommended the elimination of all important grade crossings on both banks of the river by depression of the tracks and by improvement of existing viaducts or construction of new viaducts across the river and the adjacent tracks. They recommended that all the streets named be so treated except North Spring Street, and the latter crossing was to be entirely eliminated.

While all parties agree that the grade crossings along Alameda Street and along the river should be eliminated, complainant seeks to have the union station question determined before undertaking the extensive construction of viaducts. It contends that the design of the viaducts and the extent of track depression will vary dependent upon whether the carriers' plans for a joint station or its own plans for a union station are approved. Should a union station be erected on some one of the sites suggested to the California commission or to us, the design of certain viaducts would be changed in degrees varying from a small to a substantial extent. This would not be true as to all crossings. The California commission on April 21, 1924, ordered the separation of grades at the Ninth Street river crossing, on the theory that the proposed structure would not interfere with any comprehensive plan for dealing with the grade crossing and traffic problems theretofore or at present

proposed in proceedings before that body or before us. Plans for a viaduct at Macy Street were to be submitted to that commission by July 15, 1924.

NEED FOR NEW OR ADDITIONAL STATION FACILITIES

The present Southern Pacific Arcade station was built to replace an earlier structure, and was completed in 1915 at a cost of $646,428, including appurtenances except coach yard structures. The station grounds include most of the land bounded by Alameda Street on the east, Central Avenue on the west, and Fourth and Sixth Streets on the north and south, respectively. The station building itself fronts on Central Avenue and faces down Fifth Street. The main concourse is of fireproof construction, but the wings on both sides are of frame construction with brick walls. It is well designed, and is adequate and suitable for present purposes. As above indicated, the removal of passenger trains from Alameda Street will require either its abandonment or some other means of approach such as applicants here propose.

As a result of protests against the construction of the present Arcade station, because it was feared that elimination of grade crossings on Alameda Street might thereby be delayed or prevented, the order of the railroad commission authorizing demolition of the old Arcade station and the erection of the present one provided "that the tearing down and abandonment of said old depot, and the taking up, relocating, and placing of new trackage in connection with said new depot, or the approval of this commission therefor, shall never be used as a defense against the separation of grade crossings in the state of California."

The Salt Lake admits that its passenger station at First Street on the east bank of the river is inadequate and inconvenient. The structure is a two-story frame building, erected in 1891, which cost about $10,000. It is largely given over to division offices and furnishes very poor facilities to passengers. The delay in determining the passenger terminal problem in Los Angeles is undoubtedly the only excuse for its continued existence.

The Santa Fe depot on the opposite bank of the river fronts west on Santa Fe Avenue at Second Street. It is a relatively small brick building erected in 1893, but subsequently enlarged at various times. Its value, including furniture, parking, paving, etc., is estimated at $50,000. Though much better than the Salt Lake Station it can not be considered an adequate station. It would have been replaced several years ago by a modern structure but for the uncertain outcome of the proceedings mentioned.

Complainant claims that the present time is particularly opportune for the building of a union passenger terminal. As to the necessity for such a terminal, it contends that the carriers must shortly expend moneys for needed improvements which will purchase more conveniences for the public and result in more carrier economies if spent on a union terminal instead of on separate facilities, and that Los Angeles desires a union station located with best reference to transit lines and important thoroughfares and in harmony with its civic plans. Defendants contend that as Los Angeles is to a large extent a terminal city, the number of persons transferring from one station to another without stop-over is smaller than in many cities of comparable size. Applicants state that their plan for a joint station did not originate in any need of the public for joint or union service, but only from the needs of the Southern Pacific for trackage rights along the Los Angeles River and of the Salt Lake for a new depot.

PROPOSED FACILITIES

Three principal plans for passenger terminal facilities in Los Angeles are before us. The first of these, which complainant referred to at the first hearing in No. 14778 as illustrative, is substantially the plan for a union station at the Plaza included in the recommendations to the California commission by its engineers following the investigation mentioned. It is sometimes termed the Sachse plan, and we will so designate it. The second, which may be termed the Plaza plan, was presented by the California commission at the hearing of the consolidated cases, and contemplates the erection of a union station at a specific site in the Plaza area. The city and the California commission, together termed complainants, ask that the carriers be required to provide themselves with an adequate union passenger terminal at some site in the Plaza district, and not that they build according to any particular plan. The presentation of the Plaza plan was mainly to demonstrate that an adequate union station conforming to the terms of the State commission's order could be provided at a cost reasonably comparable with that necessary to provide a joint station for the Southern Pacific and Salt Lake and separate facilities for the Santa Fe. The third plan is that of applicants for a joint station at the Arcade site, which will not be used by the Santa Fe.

The Sachse plan for a union station at the Plaza is part of a plan of larger scope suggested by the California commission engineers as a solution of transportation, terminal, and grade-crossing problems in and near Los Angeles. This larger plan, sometimes also referred to as the Sachse plan, contemplated union passenger and less-than-carload freight terminals, provided for bringing main

lines of the Pacific Electric Railway into the station, and included an extensive program of grade separation besides many other related improvements. The order of the California commission above referred to did not require the carrying out of the larger plan referred to, or the construction of the Sachse plan station. Because of its relation to the more comprehensive plan, the Sachse station plan more than either the Plaza or the Arcade plans takes into consideration the desires of the city of Los Angeles to establish a civic center in the vicinity of the Plaza. In Appendix 2 to this report we outline the three plans presented.

The Southern Pacific and the Salt Lake present an agreement for the establishment of the facilities described in the appendix as the Arcade plan, for their joint use. Provision is also made for a right of way along the east bank of the river for the Pacific Electric, an extensive interurban system radiating out of Los Angeles and a subsidiary of the Southern Pacific.[5]

In the agreement between applicants no provision is made under the Arcade plan for bringing into the station interurban trains of the Pacific Electric, the main line of which would be distant about 1,000 feet from the station on a viaduct 37 feet above grade. It would be feasible to extend a spur from the Pacific Electric viaduct into the Arcade station grounds so that cars from Pasadena, Long Beach, and other points scheduled to meet steam trains could be operated into the station.

The contract between the applicants for the joint use of facilities does not provide for the admission of the Santa Fe to the Arcade station at any future time. The Santa Fe does not wish to use the Arcade station or to join in building a union station at the Plaza, although it would least dislike the latter plan. Its preference is for a separate station of its own on the present site.

COMPARISON OF ARCADE AND PLAZA PLANS

1. *Basis of comparison.*—The proponents of plans for a union station in the Plaza district and the applicants who favor a joint station for the Southern Pacific and the Salt Lake at the Arcade site with a separate station for the Santa Fe, each seek a finding from us that public convenience and necessity require the carrying out of the plan which they respectively favor. We therefore compare the plans presented to determine which would best serve the

[5] This right of way would be reached from the Pacific Electric station at Sixth and Main Streets by continuing the present viaduct, which extends to San Pedro Street, westerly parallel to Sixth Street over the curved approach tracks described at Sixth and Alameda streets, parallel with and immediately north of the steam-line structure, reaching grade on the east bank near Fourth Street. Near Aliso Street the Pacific Electric would cross the steam-line tracks, probably overhead, and connect with its private right of way to the northeast. From a point near Alameda Street another viaduct would branch to the south and connect with the Pacific Electric right of way near Fourteenth Street.

public convenience and meet the public necessity. Except as otherwise indicated, the Arcade plan will be compared only with the specific Plaza plan presented at the last hearing. Among the points on which the parties make comparison are the adequacy of the site and the facilities which are to be provided thereon; the accessibility of the station from all portions of the city and suburbs by vehicles, street-car lines, and interurban lines; the convenience of the station to passengers and for handling of baggage, express, and mail; the segregation of passenger and freight traffic; the effect of the station site as a barrier between parts of the city; the consonance of the plans with the civic plans of the city; the new money cost of and total investment under the different projects; the relative expense of operation and the length of time necessary to carry them out. In addition, though not involved before us in the sense that our approval is sought in connection therewith, is the relative possibility under the two plans of eliminating grade crossings of the Pacific Electric in Los Angeles, which here is an element only as it may affect the question of the public interest. Furthermore, the Arcade plan makes no provision for the Santa Fe, but leaves that road to provide adequate facilities for itself.

2. *Adequacy.*—On the subject of adequacy of facilities most of the evidence related to the adequacy of the Arcade plan as to site and facilities. Except for a track across Fourth Street connecting with Alameda Street near Third Street, the station would be a stub-end station. The Plaza station also would be of the stub-end type. Stub terminals require more station tracks than do through terminals. One through track is estimated as equivalent to at least two tracks in a stub-end station. At present the Arcade station has 8 station tracks and has 2 approach tracks at each end leading to Alameda Street. As indicated, under the proposed arrangement there would be 12 station tracks and 2 approach tracks.

As to the adequacy of the Arcade site for a union station, the engineers of the California commission in their report stated:

> The site is not large enough for an adequate and permanent union station such as, in our opinion, is appropriate for the city of Los Angeles. Not only does it appear that the site may be too narrow for the required number of station tracks but there seems to be insufficient room for proper mail and express facilities and also for baggage.

In the opinion of the California commission's engineers an adequate site for a stub terminal for Los Angeles should permit the construction of 18 station tracks. They criticised the mail, express, and baggage facilities because of the seemingly impossibility of locating them so that they could be handled economically at grade. Expansion of the site would be expensive and inconvenient. Relocation of Alameda Street, the closing of or separation of grades on

Fourth Street, or the elevation of the station tracks are among the most probable means of expansion, and any of these would be attended by necessary destruction of permanent buildings.

The record contains comparisons of the proposed Arcade joint station with 18 stations in 10 important cities with respect to seating capacity and space provided for concourse, lounge and smoking rooms, and for baggage.* Stations doing a large interchange business require more seating capacity than a terminal station, and those handling much suburban travel require more concourse space than those mainly handling through passengers. Considering these facts, the seating capacity of the Arcade station compares favorably with the others, and its concourse space, while less than in all except four of the stations, is probably ample, particularly if the number of daily trains be taken as an indication of the relative number of persons using the several stations. Of the stations with which comparison is made, only the Kansas City station has more space devoted to lounge and smoking rooms than the Arcade, and only four have substantially more baggage space.

With respect to the adequacy of the Arcade station buildings for union terminal use, the report of the engineers of the California commission states:

> The present station building is large enough for some time to come. The baggage room is also sufficient. The express building will do for a "delivery" building, but a new "forwarding" building should be built with 10,000 square feet of floor area, south of the present auto park.

In May, 1923, the last period for which definite figures were given, 62 regularly scheduled through and local trains a day arrived at or departed from the Southern Pacific and Salt Lake stations, besides extra trains. All three carriers serving Los Angeles handle a total of about 84 regularly scheduled trains, about 21 of which are local trains with runs not over 100 miles in length. Based on past experience, applicants estimate that the total number of regularly scheduled trains of all three lines will amount only to about 81 trains in 1943. In 1910 the three steam lines serving Los Angeles handled in their city stations approximately 132 trains daily. At that time the population of Los Angeles was 325,000; now it is more than threefold that figure. The decrease in the number of trains during the intervening period was due to the taking off of certain of the local trains, which in 1910 numbered 78 per day. The restriction of local steam-train service apparently resulted from the development of the extensive interurban business of the Pacific

* These cities are Boston, Mass.; Buffalo, N. Y.; Chicago, Ill.; Denver, Colo.; Detroit, Mich.; Kansas City, Mo.; Minneapolis, Minn.; Omaha, Nebr.; St. Louis, Mo.; and Washington, D. C.

Electric, the establishment of auto stage lines, and the increase in the number of private automobiles. Since 1910 the number of through trains on all lines has increased from 50 per day to 63 at the present time. Applicants' estimate of a total of 81 regular trains in 1943 in part assumes that no local service will be maintained after 1928. The report of the engineers of the California commission estimates 140 trains daily in 1940. Lately the Southern Pacific built a station at Glendale which is more accessible by automobile from Hollywood and Pasadena than is the Arcade station.

Applicants' engineering officers estimate that the station under the proposed Arcade plan will be adequate for the handling of a maximum of 120 trains daily, and for the handling of 200 trains a day if two more approach tracks are added. The abutments of the proposed Sixth Street viaduct can be extended to provide for two additional approach tracks when needed. Such piecemeal construction in undesirable and more expensive than if the whole were constructed at one time.

On the basis of 62 regular scheduled through and local trains a day arriving at or departing from the Southern Pacific and Salt Lake stations, defendants made a comparison of the Arcade station as a joint facility for the two roads with the stations referred to above. This made particular reference to the number of approach tracks and to the ratio of approach tracks to station tracks. The comparison follows:

A

Station [1]	Tracks			Trains		Trains per day		Trains per busy hour	
	Station	Approach	Ratio	Per day	Per busy hour	Per station track	Per approach track	Per station track	Per approach track
Stub-end stations:									
Los Angeles (Arcade)	12	2	6.00	62	8	5.17	31.0	0.67	4.0
Buffalo (Lehigh Valley)	9	3	3.00	16	3	1.78	5.33	1.33	1.0
Detroit (Union)	3	2	2.00	47	9	9.4	23.5	1.8	4.5
Buffalo (D. L. & W.)	6	2	2.00	56	5	9.33	28.0	1.33	4.0
Chicago (Dearborn)	12	4	3.25	120	16	9.2	30.0	1.2	4.0
Chicago (LaSalle)	11	4	2.75	240	24	18.2	60.0	2.18	6.0
St. Louis	32	6	5.33	252	55	7.9	42.0	1.7	9.2
Chicago (C. & N. W.)	16	6	2.67	274	46	17.1	45.8	2.9	7.6
Boston (North)	22	8	2.87	376	43	16.4	47.0	1.9	5.6
Boston (South)	28	10	2.80	621	90	22.2	62.1	3.2	9.0
Through stations:									
Denver	9	4	2.25	93	15	10.5	23.7	1.66	3.75
Detroit (Mich. Cent.)	11	4	2.75	85	15	7.73	21.25	1.36	3.75
Minneapolis (G. N.)	13	4	3.00	116	15	9.66	29.0	1.25	3.75
Buffalo (N. Y. C.)	19	6	3.00	158	18	13.16	26.3	1.5	3.0
Kansas City, Mo	16	8	2.00	210	34	13.13	26.2	2.12	4.2
Combination:									
Chicago (Ill. Cent., Twelfth Street)	8	3	2.67	76	6	9.5	25.3	1.0	2.67
Omaha (Union)	7	4	1.75	105	13	15.0	26.2	2.14	3.75
Washington, D. C	12	9	1.30	380	23	8.8	31.1	0.7	2.4

[1] Abbreviations of names of railroads: D. L. & W., Delaware, Lackawanna & Western; C. & N. W., Chicago & North Western; Mich. Cent., Michigan Central; G. N., Great Northern; N. Y. C., New York Central; Ill. Cent., Illinois Central.

In the cases of some of the large stub-end stations, such as the Chicago & North Western station at Chicago and the Boston South and Boston North stations, there is very heavy suburban traffic. In many such cases the trains are short, and the practice of placing more than one on a station track at a time increases the number of trains that can be handled during the rush hours. This practice would not be possible to so great an extent at the Arcade station, due to the predominance of long through trains. In some instances a large number of trains originate or terminate at through stations. Thus, a majority of the trains handled in the Kansas City Union Station and in the Michigan Central station at Detroit do not go through. At Kansas City the make-up of practically all through trains is changed. This involves switching over the throat tracks. In the case of the Kansas City station the number of approach tracks does not fully indicate capacity performance, as some of them are necessitated by the roads spreading out as the ribs of a fan in all directions close to the station. Six of the lines from the east are accommodated on two approach tracks. Certain of the stations, such as the Lehigh Valley at Buffalo and the Union Station at Washington, D. C., are so far ahead of present needs as to make them of little value as showing maximum capacity.

Should the Santa Fe erect a new station on or near the site of its present one, as manifestly it will seek to do if we approve applicants' plan, such a station would doubtless be wholly adequate so far as capacity to handle its own traffic properly is considered. If, after the construction of a passenger terminal according to applicants' plan, the question should arise whether the Santa Fe should be required to join in using the Arcade station, the adequacy of the latter as a union station and the period of time during which it would be adequate would be of importance. Applicants' testimony is to the effect that the Arcade station would be adequate for all three railroads for many years to come without enlargement of the arrangement as now planned. As indicated, the regularly scheduled trains of the three carriers at Los Angeles are about 84 in number. In addition, extra trains are run as travel demands. Not uncommonly do important trains arrive or depart from Los Angeles in as many as five sections. A union station at the present time should be able to handle 100 trains a day and 15 trains a busy hour. On this basis there would be for each approach track 50 trains a day and 7.5 trains a busy hour. Of the stations shown in the table, only the Boston South station has more trains daily for each approach track, and only that station, the St. Louis station, and the Chicago & North Western station at Chicago have more trains each busy hour for each approach track. Although the exhibit is based on the

number of regularly scheduled trains rather than the actual number handled, the comparison is significant. Moreover, it is apparent that should the Santa Fe use the Arcade station the time when additional approach tracks would become necessary would be much hastened.

Complainants question applicants' estimate of the train capacity of the Arcade station and contend that, irrespective of the number of approach tracks, the Arcade site is too narrow and too small to serve as a union station for the Southern Pacific, the Salt Lake, and the Santa Fe. They particularly criticize the adverse grade out of the station under the Arcade plan. The 1 per cent grade extends for a distance of 800 feet from the south end of the umbrella sheds, and a lesser grade extends for some distance beyond. This would slow up movements out of the station and, to some extent, movements in the reverse direction. The grades are less, however, than the ruling grades on the divisions over which engines entering and leaving the station operate. In their report the engineers of the California commission gave as their opinion that at the end of 20 years 140 trains a day might be expected, and that 12 station tracks with proper approach tracks would handle that number of trains, although 18 station tracks would be preferable.

There is no refutation of the testimony as to the adequacy of the station layout under the Plaza plan to handle all the trains of all steam carriers serving Los Angeles for many years, and its capacity to care for trains of any other carriers which may enter the city. Though the curved approaches to the throat tracks are not as desirable as straight approaches, the grades and curves would tend to slow up incoming trains and to accelerate outgoing trains and thereby make a fast throat. This plan also provides ample space for baggage and express and sufficient tracks to serve those facilities.

3. *Accessibility.*—The record contains much with respect to the relative accessibility of the two sites. Many important thoroughfares radiate from the Plaza.[7]

[7] Main Street and Los Angeles Street from the south pass by it, Sunset Boulevard from the west carrying traffic from Hollywood and a large part of the San Fernando Valley reaches it, and Spring Street, which merges into Main at Temple Street, and Broadway, through its tunnel connection with Sunset Boulevard, have ready access to it. North Broadway, leading to San Fernando Road, Pasadena, and the territory east, is close by; so are Macy and Alico Streets, which carry a heavy volume of traffic to the territory north and east of Los Angeles. Alameda Street, an extended thoroughfare from the south, and diagonal in direction with respect to Main Street, taps a large territory, and passes through the industrial section so within a block of the Plaza and immediately in front of the proposed Plaza Station. San Pedro Street, which fans out intermediate between Main and Alameda Streets, and serves a considerable portion of the city to the south, terminates near the Plaza, and under the Plaza plan would merge into Alameda Street in front of the station. Traffic from the west and southwest can reach the Plaza district through Figueroa Street and Sunset Boulevard and thereby avoid the crowded business section.

In the case of the Arcade station, the radiation of streets is not so favorable. To reach it vehicular traffic from the west and southwest must cross the business section or detour around over streets that are not through highways. The Arcade station is, however, somewhat closer to the center of the business, shopping, and hotel district than is the Plaza site, and can be reached by cab therefrom slightly more quickly. The Santa Fe station is not as well located with respect to arterial highways and with respect to the business, shopping, and hotel district as either the Arcade or Plaza sites.

In respect of accessibility by street-car lines the Plaza station would have an advantage, owing to the fact that more lines reach the Plaza district and would distribute more passengers without the necessity of transfer than is the case at the Arcade station. There are eight street-railway routes passing the Plaza with an aggregate length of 97.8 miles, as compared with two such routes serving the Arcade station with an aggregate length of 18.2 miles. At present the lines which serve the Plaza are some 750 feet from the concourse of the proposed Plaza station on Alameda Street, and persons reaching the station by street car would have to walk this distance. It would apparently be feasible to shorten this distance at least 300 feet, and permit access to the station from Los Angeles Street by extending the street-car tracks around the Plaza. The Santa Fe station is served by three street-car lines. There is no through street-car service between the Santa Fe and Arcade stations, and transfer between them is inconvenient except by cab. Probably 60 to 70 per cent of the steam-railroad passengers use street cars in going to or coming from the station. The engineers of the State commission considered the Arcade site as a location for a union station only slightly inferior, as respects accessibility by street cars, to the site for a station under the Sachse plan. In their opinion the distance of the Santa Fe site from the business district made it far the least desirable site for a union passenger terminal. As regards accessibility by street cars, they assigned to the Plaza, Arcade, and Santa Fe sites, considered as sites for union stations, weighted ratings of 60, 48, and 18, respectively.

Complainants and applicants stress the accessibility of the sites they favor to the interurban lines of the Pacific Electric. In 1922 those lines carried 88,006,000 passengers. This carrier handles most of the Southern Pacific's local business, including its Long Beach and Pasadena traffic. If the Arcade plan is carried out the Pacific Electric will bring all through trains from the northeast, east, and south into its station at Sixth and Main Streets over its own viaduct described above. At present a local line of the Pacific Electric extends from the Arcade station past the Electric company's sta-

tion to the Edendale section. Unless an elevated spur from the Pacific Electric viaduct were extended into the Arcade station as suggested, the inconvenient access to the viaduct and the lack of facilities at that point probably would cause many passengers transferring between the Arcade station and such lines of the Pacific Electric to go to the station at Sixth and Main Streets, and there transfer between the local and interurban lines of the latter. The local line mentioned does not reach without transfer the Pacific Electric's Hill Street station, the terminal for its lines to the west and northwest. The Santa Fe station is not served by the Pacific Electric; most of the passengers transferring between the two systems would have to make use of the local street cars or cab service. The street-car lines serving the Santa Fe station do not reach without transfer the station of the Pacific Electric at Sixth and Main Streets.

The present main line of the Pacific Electric to points northeast of Los Angeles, including Pasadena, Pomona, and San Bernardino, passes the Plaza station site on Aliso Street. The lines to the south do not pass the site, although under the present surface-track arrangements special trains coming therefrom could reach it, but would cross many busy streets at grade. Provision could easily be made to bring a local line of the Pacific Electric to the Plaza station grounds or to detour the Aliso Street line through the station. The former would be feasible even though the Pacific Electric constructed its proposed viaduct to the east bank of the river. Use of such local line by interurban passengers would generally involve a transfer at the Pacific Electric station. Under either the Plaza or Arcade plans, Pacific Electric passengers from the west and northwest using its Hill Street station would have to transfer to a local line.

4. *Convenience.*—One of the principal arguments for a union station as contrasted with separate stations is that it promotes to a greater extent the convenience of passengers and makes possible the handling of baggage, express, and mail in one location. The proportion of travelers reaching Los Angeles who transfer immediately to another railroad is not as large as at many cities. Most travelers who come into Los Angeles from a distance stop in the city or its environs for a short time at least, and for them a union station is less important. Applicants presented estimates that 97 per cent of Los Angeles passenger traffic is terminal rather than interchange traffic. For the first 10 days of June, 1923, the Santa Fe, the Salt Lake, and the Southern Pacific brought into Los Angeles 41,030 passengers, of whom 824, or slightly over 2 per cent, transferred

from one station to another. This does not include persons stopping over in Los Angeles, passengers transferring at Los Angeles but traveling on separate tickets to and from that point, or passengers transferring to and from the Pacific Electric. Since the war period the Santa Fe through service between the east and San Francisco has been much restricted, and its through service between San Diego and Los Angeles, in Southern California, and San Francisco has been discontinued. As a result there are undoubtedly many more transfers between the Santa Fe and Southern Pacific at Los Angeles than formerly. The California commission's engineers' investigations indicated that probably 10 per cent of the passengers carried by the steam lines normally transferred from one road to another. This does not include passengers transferring to or from the Pacific Electric.

Complainants regard the Arcade station itself as less convenient for passengers than the Plaza-plan station. To reach trains at the Arcade station, passengers must go through the waiting room down a 15 per cent incline to the subway 10 feet below, and up by a similar incline to the station tracks. Incoming passengers go down into the subway and thence out by an 18 per cent incline through the building to the sidewalk. At the station proposed for the Plaza, if the ticket office were on the lower level, passengers could come in from Alameda Street and go to trains with an ascent of 8 feet in the case of impaired clearance at the Alameda Street bridge, or an ascent of 13 feet and a descent of 5 feet in case full clearance were allowed. All ramps would be on 10 per cent grade, which is standard for such construction. Congestion of passengers arriving from trains would be greatly reduced by the two-level station. Street cars and autos could be reached from the upper level, and taxi stands and autos from the lower level.

The possible consolidation of baggage, express, and mail facilities through unification of passenger terminals would be much more convenient for the public than the maintenance of separate facilities at more than one station. The handling of baggage at a union station would be a convenience to passengers, and would result in an economy. Consolidation of mail facilities near the central post office in the Federal Building, which is close to the Plaza, would be of substantial benefit in handling the mails. In summing up the advantages and disadvantages of the sites considered by them for a union station, the engineers of the California commission in their report stated:

The Southern Pacific site stands first with regard to the collection and distribution of baggage, mail and express. This is because the origin and

destination of the express matter, (by far the largest item among these three), lies in a district closer to the Southern Pacific station.

5. *Segregation of passenger and freight traffic.*—Under either the Plaza or Arcade plans all freight traffic, except night switching of industrial freight, would be taken off Alameda Street and diverted to the river banks. Under the Arcade plan both passenger and freight traffic of the Southern Pacific and the Salt Lake would be handled on the east bank of the river, and Santa Fe freight and passenger business would remain on the west bank. If the Plaza plan is effectuated, all passenger traffic except that moving over the El Paso line will be routed along the west bank of the river. It is probable that considerable freight business would be so routed, although the east bank well could be used for some freight movements. At present the Pacific Electric hauls through the city no freight moving between its southern and northeastern branches, but delivers it to the Southern Pacific for transfer by way of Alameda Street. The northern transfer yard is at Macy Street, and the carrying out of the Plaza plan would necessitate its abandonment. A substitute service could apparently be had in connection with the Salt Lake as a switching line between Alameda Street and the Elliott Street transfer, but if the Southern Pacific should divert its freight traffic to the east bank, as proposed under the Arcade plan, it could itself perform the service.

The industrial district of Los Angeles is largely west of the river, and is reached by many spurs extending from the Santa Fe line westerly to the industries. Recognizing the possibilities this situation offers for unifying certain freight facilities on the west bank of the river, the California commission's engineers in their report recommended the establishment of a union less-than-carload freight station at the Santa Fe terminal site. The order of the California commission for the establishment of union terminals did not include provision for any unified freight facilities. The California commission engineers also noted the greater possibility of segregating passenger and freight operations on opposite sides of the river under the plan for a union station at the Arcade site than under the Plaza plan there considered. Under the Plaza plan there would necessarily be some conflict in passenger and freight operations on the west bank of the river, though this would be minimized if provision were made for freight operation on the east bank.

6. *Station site as barrier to city traffic.*—Complainants make comparison of the Arcade and Plaza plans with respect to the extent to which the station grounds and track layout obstruct traffic or act as

a barrier between related sections of the city. This comparison favors the Plaza site.[8]

Upon exception and argument applicants state that under their plan the handling of through Southern Pacific freight trains on the east bank of the river will eliminate the grade crossings at North Main and North Spring streets by its line on Redondo Street. The same arrangement is equally possible under the Plaza plan. Indeed, applicants' estimate of costs for the latter plan provides for an east-bank freight line.

7. *Consonance with civic plans.*—The Plaza harmonizes with the civic plans of Los Angeles much more closely than does the Arcade plan. The city through its planning commission undertook a study to determine the proper location for its administration or civic center. The report of that commission found that the Plaza is the center of population of the Los Angeles metropolitan area, that it is the geographical center of that area, and that it is the point of convergence of the largest number of streets and highways. The planning commission recommended that the civic center be established in the area bounded by First Street on the south, Los Angeles Street on the east, Sunset Boulevard on the north, and Hill Street on the west. The Plaza proper lies within this area, and the Plaza station here proposed would adjoin the area on the east. The city council approved the report, and has proceeded to acquire the necessary lands within the described area for the erection of public buildings and the relocation of Spring Street and North Broadway. In June, 1923, the voters of Los Angeles by an overwhelming majority authorized the location of a proposed new city hall in the

[8] The district between Alameda Street and the river is largely industrial. There is a heavy trucking traffic between it and that part of the city west of Central Avenue. In addition there is a heavy vehicular traffic over the Fourth Street viaduct between the east and west sides of the city. The Arcade station blocks Fifth Street completely. Under applicant's plan undesirable crossing situations would remain at Fourth and Sixth streets. To accomplish the depression of Sixth and Alameda Streets necessary to the viaducting of the approach to the Arcade station grades of 3 per cent would be introduced. An industry track from north on Alameda Street would extend south down one of these grades across Sixth Street and would turn down south into the Los Angeles Market. As above noted, one track other than those on Alameda would remain across Fourth Street north of the station to provide access to the railway-mail post office, express yard, and the plant of the Los Angeles Ice & Cold Storage Company. Defendants estimate the movements over this track to the railway-mail post office at 8 to 10 a day. The same track connects with the tracks on Alameda Street near Third Street and, together with a connection between the Alameda Street tracks and the throat of the yard, would provide a means of running around the station yard without blocking the throat tracks. To the extent that switching at the railway-mail post office, express yard, and cold-storage plant from time to time involved moving cuts of cars over the Third Street switch connection, or to the extent that this facility might be used to run around the station yard, the heavy traffic on Third Street would also suffer interference. There are no streets crossed at grade at the Plaza site, except for the industrial freight line, which would remain on Alameda Street in either case. The station site would lie between two traffic arteries, but would not obstruct traffic, as there is comparatively little between the sections immediately north and south thereof.

area just described in preference to a location south of Ninth Street, west of Los Angeles Street, north of Washington Street, and east of Grand Avenue. Within the civic center area at the present time are several public buildings, including the county courthouse, the Hall of Records, an additional building used for county offices, the city hall annex, and the Federal Building. A new Hall of Justice is being erected within the area at North Broadway and Temple Streets. Public authorities own other lands within the area, and still more land therein is now being condemned for various public purposes. The Arcade station is about a mile distant from the civic center.

The character of improvements in the Plaza district, particularly near the site of the proposed Plaza station, is now not as good as at the Arcade station site. A large foreign population lives near the Plaza, chiefly Mexican and Mongolian. Under the proposed Plaza plan the acquisition of the necessary land would dispossess most of the Mongolians in that immediate district. A station on the Santa Fe site would not harmonize at all with the city's civic center plans. This site is next the river surrounded by an industrial district. It is also about a mile from the civic center.

8. *New money costs and total investment.*—The California commission sought to prove that the net new money required for a union station at the Plaza need not exceed that necessary to carry out applicant's plan and to provide separate and adequate facilities for the Santa Fe. It endeavored to establish that if such a union station were built the total investment in passenger-station facilities would be less than if a joint station were built for the Southern Pacific and the Salt Lake and a separate station for the Santa Fe. The California commission's computations are summarized in the following table. Some items which would be the same under either plan, with the exception of the Southern Pacific coach yards, are not included.

Description	Applicants' plan	Santa Fe	Total	Plaza
1. Passenger station and facilities	$1,483,059	$1,500,000	$2,983,059	$6,476,000
2. Coach yards (both plans)	416,780		416,780	416,780
3. New trackage and connections	1,590,380	120,000	1,710,380	326,600
Subtotal, 1 to 3	3,490,219	1,620,000	5,110,219	7,219,380
4. Net salvage value of released property:				
Southern Pacific station site				[1] 3,000,000
Santa Fe station site				[1] 950,000
Net			5,110,219	3,269,380

[1] Credit.

Taking the same subtotals and adding thereto the estimated value of the existing station facilities, the State commission computes the total investment in passenger-station facilities as follows:

Description	Applicants' plan	Santa Fe	Total	Plaza
1-3. Subtotal	$3,490,219	$1,620,000	$5,110,219	$7,219,380
5. Existing station facilities	4,805,000	950,000	5,755,000	
Total	8,295,219	2,570,000	10,865,219	7,219,380

In their brief applicants have revised these figures, with the result that their estimates of the new money required are $3,990,219 for the separate facilities, as against $10,880,180 for the Plaza plan, and their totals for investment in station facilities are $8,690,219 for the separate facilities, as against $11,617,180 for the Plaza plan.

Some of the points of divergence with the State commission's estimates will be noted. There is no dispute as to the propriety of applicants' items 1, 2, and 3, nor as to item 2 under the Plaza plan. Applicants' revision includes but $500,000 for separate station facilities for the Santa Fe. There is nothing of record to support this figure other than the unsworn statement of counsel for the Santa Fe at the hearing and on brief that this amount would be sufficient to provide it with adequate station facilities. The figure of $1,500,000 used in complainants' computation as the cost of a separate Santa Fe station was named by an engineer of the California commission as the assumed amount the Santa Fe would expend in providing such facilities. He also testified that at present prices the cost of facilities equal to those at the Arcade station would run well over a million dollars. The Arcade station contains in the wings of the building 300,000 cubic feet of office space which the Santa Fe contends is unnecessary to an adequate station. If the Santa Fe builds a separate station it will probably expend at least the amount estimated by complainant, but for present purposes we may assume that it would provide station facilities equal to those at the Arcade station minus the office space. Making suitable deduction for such space, the record warrants the use of $1,000,000 as the reasonable cost of separate and adequate Santa Fe station facilities.

Applicants' computation omits $120,000 for double tracking the Santa Fe from North Broadway to Aliso Street on the ground that such construction would be unnecessary if the Plaza plan is not carried out. Unless the west approach to the proposed Macy Street viaduct is extended to pass over the Santa Fe passenger line between Alhambra Avenue and Aliso Street, the track construction contemplated by this item will have to be made regardless of which

station plan is effectuated. The Santa Fe states that the item relates to grade separation only and is no proper part of the expense of a passenger station, whether union or separate. We will omit that item from both the Plaza and separate-station plan estimates. Defendants' figures make several additions to Plaza item No. 1, as follows:

Additional allowance for engineering and contingencies	$165,000
Additions to station building	190,000
Division offices	190,000
Express building	200,000
Increase in land-value estimate	2,902,800
Total	3,647,800

Applicants' cost figures for a joint Southern Pacific-Salt Lake station include an item of 27 per cent of construction costs, to cover 5 per cent for engineering, 7 per cent for interest, and 15 per cent for contingencies. The State commission has allowed 20 per cent for these items. To provide a comparable basis for comparison defendant would increase the allowance by 7 per cent of $2,353,300, the construction costs as estimated by the State commission, or $165,000. Applicants' revised estimate adds $190,000 to the State commission's estimate of $1,500,000 for a station building. This is based upon a cost of $120,000 for the concourse between the head house and the stub end of the tracks, plus $30,000 to cover exterior features such as ramps and subway construction in Alameda Street, and an allowance of 27 per cent of such additions for engineering, interest, and general contingencies. The head house of the station contemplated would be of steel-frame construction, similar in type to the head house of the Arcade station, and would be 400 feet in length, 120 feet wide, and 60 feet in height. The commission estimate of 50 cents per cubic foot would produce a cost of $1,440,000 for the head house. Assuming that the concourse and exterior features would cost $150,000 additional, such amounts would be amply taken care of by the $60,000 balance of the estimate and by the allowance for engineering, interest, and general contingencies, which as increased amounts to $405,000.

The present Arcade station contains 300,000 cubic feet of space used for division offices. The Plaza plan apparently makes no such provision. Assuming like space were provided in the Plaza station building at a cost of 50 cents per cubic foot plus 27 per cent for engineering, etc., complainant's figures should be increased $190,000 as indicated.

The California commission's figures contain no provision for an express building, apparently on the theory that it is not defendants' duty to provide that facility. But the plan is not comparable

to the Arcade plan without an express building. Whether defendants or the express company build it, the value thereof would still form a portion of the base on which a fair return should be paid by the public either in railroad or express rates. Defendants' estimate is that $20,000 would be necessary for this purpose.

The land required for the Plaza plan station would have an area of 1,780,286 square feet. The cost, according to the State commission's figures, would be $2,597,200.*

A consideration of the land values of $2,017,365 and $3,490,500 on the bases of the unit prices named by the deputy county assessor and those used by defendants, respectively, persuade us that under the circumstances the former is too low and the latter too high. An average of the two, $2,753,932, would be a fairer figure. Increasing this amount by 25 per cent, to cover cost of acquisition, and adding 12 per cent to the total for interest during construction, the resulting figure would be $3,855,505. The evidence of record justifies the conclusion that this amount should be allowed as the probable future cost of the station lands under the Plaza plan.

In revising the State commission's figures defendants have added to Plaza item 3 $750,000 to provide freight trackage on the east bank of the river for the Southern Pacific substantially similar to that under applicants' plan. Assuming that Southern Pacific freight would be so handled on the east bank rather than on the west bank at less cost for construction, the costs comparable with those shown under the applicants' plan would not amount to $750,000. The only construction covered by applicants' item 3 is of Salt Lake units 1 and 2 and Southern Pacific unit 2. The last two units, with costs

* This apparently consists of a base figure of $1,954,480, plus approximately 18.6 per cent for cost of acquisition and 12 per cent of the total for interest during construction. The base figure represents twice the assessed value for the assessment year 1924–25. Assessments of land in Los Angeles County are customarily made at 50 per cent of the estimated fair market value. The testimony of the deputy county assessor, who for years has made the assessments on property in the industrial district, including the Plaza site lands, indicates that the fair market value of the land at the time of the hearing was $2,017,365. A witness produced by defendant testified to much lighter land values in the Plaza district, and said that the asking price of land therein would be increased 25 per cent if a station in that section were ordered. On this basis defendants claim the cost of the necessary lands would be $5,500,000, or $2,902,800 in excess of the amount estimated by the State commission. Defendants' figure is based upon the assumed acquisition of an area of 2,300,000 square feet, which is larger than that contemplated by the Plaza plan. Applying defendants' unit prices to the proper area, a base cost of $3,490,500 results. An allowance for assumed increase in asking price other than as covered in the allowance for cost of acquisition does not seem proper. At the argument the parties stipulated that the Southern Pacific has recently acquired title to the so-called Hanchett lands, about 25 acres of which would be necessary for a portion of the station site under the Plaza plan. These lands were acquired in connection with the acquisition of the El Paso & Southwestern system. Counsel for the Southern Pacific at the argument stated that the El Paso & Southwestern paid $6,250,000 for the Hanchett lands. The report of the California engineers indicates that these lands have an area of 1,500,000 square feet, or approximately 34.4 acres. The record with respect to this transfer does not enable us to accord much weight to the figures quoted.

of $86,935 and $326,498, respectively, would be required under the assumption made. But the balance of the $750,000 would not be required for merely that portion of Salt Lake unit No. 1 necessary for freight service. So far as can be determined from the data of record the only construction required would be the double tracking of the Salt Lake line from Alhambra Avenue to a point midway between Macy and Aliso Streets and the provision of double-track turnouts at the south leg of the Alhambra wye and at Elliott Street. Apparently $50,000 would cover these costs, making a total of $463,433 for the east-bank freight-line construction.

Revising the State commission's estimate in line with the conclusions reached, we produce the following results:

Description	Applicants' plan	Santa Fe	Total	Plaza
Passenger station and facilities (item 1)	$1,463,059	$1,000,000	$2,463,059	$9,356,000
Increased engineering, etc				165,000
Division office space				190,000
Express building				200,000
Increased land allowance				1,238,305
Coach yards (item 2)	416,780		416,780	416,780
Trackage and connections (item 3)	1,590,380		1,590,380	206,680
East bank freight line				463,433
Subtotal	3,490,219	1,000,000	4,490,219	9,256,118

Applicants' revision of the California commission's statement reduces to $737,000 the item of $3,000,000, which represents the salvage value of property at the Arcade site to be released from passenger service in the event the Plaza plan is carried out. This reduction is based upon the anticipated reversion of a portion of the Arcade site, known as the Wolfskill tract, which was given to the Southern Pacific by grant deed, subject to the condition that it should be used for a general railroad passenger station and not otherwise and should revert to the grantors upon breach of the condition. It is well established that the right of a carrier or the public authorities to make such change in the location of a railroad station as may be required to provide reasonable and adequate service can not be controlled or prevented by private contract or by the fact that private citizens in the expectation of the continuance of a station at a particular place have made donations of land or money. 33 Cyc. 143, and cases there cited. A condition subsequent in a deed, providing for the reversion of real property in case any certain act is done or omitted, is inoperative where the doing or omission is compelled by public authority.[10] The reduction of the item men-

[10] 18 C. J. 375; *Scoville* v. *McMahan*, 62 Conn. 378; *Doe dem. Marquis of Anglesea* v. *Church Wardens of Rugely*, 6 Q. B. 107; 2 *Washb. Real Prop.* 15; *Fidelity Ins. Trust & Safe Dep. Co.* v. *Fridenberg*, 175 Pa. St. 500; and *German E. P. Congregation* v. *Schreiber*, 277 Mo. 113.

tioned is therefore not justified. But, even assuming reversion, the basis for the figure of $737,000 used in applicants' brief does not appear. The area of the Wolfskill tract is 81 per cent of the total area of the Arcade station grounds, but its value based on 1918 figures is 62.4 per cent of that of the total area. If the total salvage item of $3,000,000 be apportioned on the basis of relative land values as above, the value of the non-Wolfskill property would be $1,128,000. But the station building, estimated to have a salvage value of $159,000, is not located upon the Wolfskill tract. The record does not admit of determining with exactness the value of the property not affected by the reversionary clause. But if the value of the land alone be taken on the basis of $5.50 per square foot as testified by the deputy county assessor and apportionment is made on the basis of the relative values in 1918, the value of the non-Wolfskill lands is $1,337,719. The record amply warrants the conclusion that even if the anticipated reversion should occur, salvage values of at least $1,250,000 would remain.

The item of $950,000, representing the value of Santa Fe station lands that would be released from passenger service if a union station were built at the Plaza, is omitted from applicants' revision of the California commission's comparative statement of new money costs. This is on the theory that these lands would not be sold, but would be retained in railroad ownership for use in freight service. The station grounds front on Santa Fe Avenue and adjoin the freight yards. The less-than-carload freight station of the Santa Fe is on the opposite side of Santa Fe Avenue somewhat south of the present station building. These lands if released would be very desirable as industrial property. But assuming that the Santa Fe would retain them for freight purposes, their value would still be a proper deduction in estimating the new money costs of union passenger station facilities at the Plaza. The virtual purchase of additional lands for freight service should not be counted as a cost of passenger facilities in making such comparison between the different projects.

Defendants' computations reduce complainants' figure of $4,805,000, representing the value of existing station facilities of the Southern Pacific to $3,784,000. The latter figure takes the salvage item of $3,000,000 as the value of the land, and adds thereto for facilities the 1916 valuation figure of $784,815 claimed by the Southern Pacific. The item of $3,000,000 has not been fully explained of record, nor its elements revealed, but apparently it is based upon the assumption that the Southern Pacific station and facilities would be demolished and that the value of the land would be much less for industrial sites than its value as a single piece for a station site. Present

values are much higher than those of 1916. If present-day values are taken as the value of these properties in railroad use, the figure of $4,805,000 does not appear excessive in the light of the evidence of record. At one of the hearings before the California commission in 1917 the Southern Pacific claimed a value of $5,000,000 for the facilities between Fourth, Sixth, Central, and Alameda Streets. Revising the State commission's cost comparisons on the basis of these conclusions, the results are as follows:

Description	Applicants' plan	Santa Fe	Total	Plaza
Subtotal	$3,490,219	$1,000,000	$4,490,219	$9,256,118
Salvage value of released property (item 4):				
Southern Pacific station site				[1] 3,000,000
Santa Fe station site				[1] 860,000
New money required	3,490,219	1,000,000	4,490,219	5,396,118
Subtotal	3,490,219	1,000,000	4,490,219	9,256,118
Existing station facilities (item 6)	4,805,000	950,000	5,755,000	
Total investment, property devoted to passenger terminal uses	8,295,219	1,950,000	10,245,219	9,256,118

[1] Credit.

One other element of cost should be noted. The Plaza plan makes provision for accommodation of additional lines of railroad and for many additional trains with but slight expenditures. As indicated above, the approach-track arrangement under the Arcade plan would need amplification if the number of trains in and out should substantially exceed 120 per day. Applicants' plans provide for construction, if and when necessary, of two additional approach tracks on trestles from the east bank of the river. The cost of such construction would be practically equivalent to that of the proposed viaduct, estimated at $2,087,322. If ultimate cost be considered and this item included, the additional investment required under the Arcade plan would amount to approximately $6,577,500, as against about $5,306,000 under the Plaza plan, and the total value of property in passenger service would become about $12,332,500, as compared with approximately $9,256,000. With only the Southern Pacific and the Salt Lake in the Arcade depot, viewed by present conditions, it is not likely that expansion of the approach to four complete tracks across the river would become necessary for some years. It might sooner become necessary to construct two additional short approach tracks to facilitate station switching, long enough for any passenger train, but they would not require new bridges over the river. The record furnishes no satisfactory basis for determining the cost of such partial expansion.

The cost of passenger facilities under the carriers' plans as above estimated would need some revision if the Santa Fe should use the Arcade station in common with applicants. The cost of a separate

station for the Santa Fe would be eliminated, and provision should be made for connections with the Salt Lake at Hobart and at Humboldt Street on the east bank of the river. The cost of these connections probably would not exceed $80,000. An additional express building with a floor area of 10,000 square feet would be necessary under this plan. Such a building would probably cost about $75,000. If a site were provided south of the present station auto park, the land would probably cost $80,000, not including land necessarily acquired but not needed for an express-building site. On this basis the new money cost would be about $3,725,000 with two approach tracks and $5,812,500 when two more such tracks should be added. Similarly the total investment would be $8,530,000 under the first assumption and $10,617,000 under the ultimate plan. If a viaduct for all four tracks were provided at the start, as would seem to be advisable if the Arcade station were converted into a union station, the new money cost and total investment would possibly be somewhat less than the ultimate figures shown. These figures do not include the cost of providing more accessible engine terminals and coach yards for the Santa Fe or better means of access from their present facilities.

9. *Expense of operation.*—The record contains some evidence bearing on the saving in operating expense under the Plaza plan. Most of such evidence does not relate to the specific Plaza plan now before us. One comparison is pertinent. Under the Arcade plan, according to an engineering witness, locomotives would have to develop 6,755,570 foot-tons daily as against 4,885,700 foot-tons under the Plaza plan. On this basis the witness estimated that 38 per cent more fuel would be used in the operation of passenger trains within the terminal under the Arcade plan than under the Plaza plan. It is clear that the movement of trains and equipment into and out of the Arcade station over the proposed viaduct would be a much more expensive operation than would be encountered at the Plaza plan station.

10. *Period of construction.*—Applicants state that the Arcade plan could be carried out within a period ranging from 18 months to two years. Completion of a union station at the Plaza would necessarily take somewhat longer, because of the necessity of first making detailed plans. There might be further delay as a result of litigation. Three years would probably be required to carry out the Plaza plan.

11. *Elimination of Pacific Electric grade crossings.*—The operation of Pacific Electric cars and trains on the city streets now creates a more hazardous if not a more inconvenient condition than any caused by the operation of steam trains at grade. As indicated, if the Southern Pacific-Salt Lake plan is approved, the Pacific

Electric will construct an elevated road from its Sixth Street station to the east bank of the river and to its right of way at Fourteenth Street. Such construction would make possible the elimination by this carrier of 16,199 daily grade crossing movements at some 56 intersecting or connecting streets. The same construction would be possible under the Plaza plan, though not so probable, as arrangements would have to be made for the Pacific Electric to obtain the necessary right of way on the east bank, and such construction would divert most through trains from the Plaza location. The retention of the Aliso Street line at grade would perpetuate numerous grade crossings, though it would be possible to construct an elevated line from the river at Aliso Street or from the proposed Plaza station at Aliso Street down San Pedro Street to the elevated line paralleling Sixth Street. In brief, under the Arcade plan the Pacific Electric grade crossings would be greatly minimized within a reasonable construction period. Its right of way from Main Street to the river is now 90 per cent complete. Under the Plaza plan similar elimination could be had though not now provided for, but its accomplishment would probably be longer delayed.

FINANCIAL ABILITY OF CARRIERS

The Southern Pacific plans to finance its portion of the costs of the Arcade project as set forth in the applications out of current funds, without the present issuance of securities. Later it may seek our approval to capitalize the investment. Similarly, the Salt Lake intends to meet its portion of the cost of such plan out of current funds or out of advances made from time to time by the Union Pacific Railroad Company or the Oregon Short Line Railroad Company, or both, which together own the entire capital stock of the Salt Lake. Subsequently, the Salt Lake or its controlling carriers may ask approval for the permanent financing of such expenditures, together with others made in recent years.

Income balances of defendants transferred to profit and loss are as follows for the calendar years enumerated:

Carrier	Balance
Southern Pacific Company:[1]	
Year 1921	$27,321,326.98
Year 1922	24,902,729.72
Year 1923	30,012,397.42
Santa Fe:[1]	
Year 1921	19,368,868.23
Year 1922	18,627,018.71
Year 1923	21,778,830.31
Salt Lake:	
Year 1921	[2] 1,286,117.97
Year 1922	[2] 1,283,676.43
Year 1923	237,165.56

[1] The Southern Pacific charges its dividend payments to profit and loss, while the Santa Fe charges them to income.
[2] Loss.

Of the Southern Pacific figure for 1921, approximately $26,000,000 arose through the disposition of oil properties. In 1922 the Santa Fe received $17,000,000 in a settlement with the United States Railroad Administration.

None of the three carriers has any outstanding notes payable. The current assets of the Southern Pacific include $17,000,000 in cash; of the Santa Fe, $25,000,000; and of the Salt Lake, $315,000. The investments of the Southern Pacific include about $30,000,000 in Government bonds, and of the Santa Fe some $32,000,000 in Government bonds and notes. The Salt Lake suffered deficits in 1921 and 1922, but appears to be growing stronger. Its stocks and bonds are all owned by the Union Pacific or affiliated companies, and are not on the market. The Union Pacific has no notes outstanding, owns $38,000,000 of Government bonds and other Government securities and has cash assets of $12,000,000. The Southern Pacific, Santa Fe, and Union Pacific have been in a strong financial condition since 1917, and are now in such a condition. Their bonds are selling on favorable terms, and their stocks command a good price. The record indicates that neither the Southern Pacific nor the Santa Fe would experience any financial embarrassment if called upon to finance a capital expenditure of $10,000,000 for new passenger-terminal facilities in Los Angeles, and that the Union Pacific would not experience any such embarrassment in assisting the Salt Lake to bear its share of a union passenger terminal development entailing such a cost. At the argument counsel for applicants stated that any order we might enter in these proceedings would not impair their financial ability to perform their duty to the public.

An offer by a former owner of lands in the Plaza district to finance a union depot if built in that section was received at the hearing.

SUMMARY

The service afforded by each of the present passenger stations of the Salt Lake and the Santa Fe is unreasonable and inadequate, and those carriers are under the immediate necessity of, and contemplate, expending considerable sums of money in providing reasonable and adequate facilities in lieu of those now owned and used. The clearly established necessity of eliminating from Alameda Street all railroad train service, except industrial freight-switching service, is undisputed. Such elimination of train service will force the Southern Pacific to provide other means of access to its Arcade station or to abandon that station and provide other facilities in its stead. Either course will be attended by the expenditure of substantial

amounts of money. The carriers named can provide reasonable and adequate station facilities and the expense involved will not impair their ability to perform their duties to public. This brings us to a résumé of the advantages and disadvantages of the various plans for station facilities hereinbefore detailed.

The Arcade plan for a joint station for the Southern Pacific and Salt Lake, proposed in Finance Docket No. 3569, makes no provision for the Santa Fe and leaves it to provide separate facilities for itself. This plan has certain advantages and is subject to certain decided objections. The terminal planned would doubtless be adequate for the Southern Pacific and Salt Lake for a number of years, and any separate station which the Santa Fe might erect would doubtless be adequate for its needs and those of the public. Aggregating the separate Arcade station and a Santa Fe station, their accessibility by vehicles, street-car lines, and interurban lines is poor, though the Arcade station alone is not so deficient as respects street and interurban car lines. Considering the convenience to passengers and in the handling of baggage, mail, and express, the Arcade plan with separate Santa Fe station would be deficient. Segregation of passenger and freight routes on opposite sides of the river would not be possible under the Arcade plan as proposed. This objection standing alone is not serious, but the segregation would be preferable. The Arcade station would act as a barrier to vehicular traffic between the industrial district and the business district at Fifth Street. To an appreciable extent the proposed arrangement would retard the movement of traffic at Fourth and Sixth Streets and possibly at Third Street. The depression at Sixth Street would affect travel on Alameda Street.

Separate stations at the Arcade and Santa Fe sites do not fit in well with the civic plans of the city. The new money cost of terminal facilities would be approximately $4,500,000, and the total investment $10,500,000. To this should be added the cost of additional approach tracks as they become necessary. With only the Southern Pacific and the Salt Lake using the Arcade station, the full increase to four complete approach tracks would probably not become necessary for years, although some expansion might be needed in the not distant future. The operation of trains on a long viaduct and into the Arcade station on a descending curve, together with the necessity of maintaining coach yards and engine terminals at a considerable distance from the station, are undesirable, and will necessarily result in greater expense than would be incurred under a more desirable layout. Probably two years would suffice to complete erection of necessary facilities if the Arcade plan were approved. Numerous Pacific Electric grade crossings could be elimi-

nated economically and expeditiously following approval of the Arcade plan.

Though applicants stated that the Arcade station plan could conveniently include the Santa Fe, they have made no provision for its inclusion, and the Santa Fe is unwilling to participate in the use of such a station. We do not have the details of such changes in the proposed facilities as would be necessary, or their costs. Such use of the station would apparently remove in various degrees several of the substantial disadvantages incident to the Arcade plan as proposed, although others might be introduced thereby. With sufficient approach tracks the Arcade station could accommodate all three lines for a number of years. Though four complete approach tracks might not have to be provided immediately, some partial expansion of the proposed approach arrangement likely would be necessary, and probably at the start the viaduct should be built to accommodate four complete approach tracks. The narrowness of the site makes the Arcade station particularly dependent upon ample approach facilities.

Inclusion of the Santa Fe would improve the accessibility of the passenger facilities. A union station at the Arcade site would not be as accessible to vehicular traffic as either of the Plaza plans, and would be a little inferior as respects street-car service. As respects interurban lines, the relative accessibility of union stations at the Arcade and Plaza sites depends largely upon what changes are made in the lines of the Pacific Electric and in the manner of operating its trains into and out of the city. The advantage in this respect would seem to lie with a union station at the Arcade site. This does not attempt to pass upon the relative merits of different terminal arrangements for such interurban lines.

As respects the convenience to passengers which would flow from a unification of terminals, a union station on the Arcade site would be as good as one at the Plaza, and in handling baggage, mail, and express would probably be more convenient.

The possibility of segregation of passenger and freight routes is greater under an Arcade union plan than under any other that has been presented. The net new money cost of an Arcade union terminal based on the provision of a four-track approach and appropriate facilities would approximate $5,000,000,[11] and the total investment $11,000,000. Assuming only a partial expansion of the approach-track arrangement for the present the new money cost would probably not greatly exceed $3,500,000 and the total investment $9,500,000. The expense of operation would probably be somewhat greater under

[11] Including $500,000 for necessary changes in the Santa Fe facilities and deducting the value of its site.

this arrangement than under the others. The other advantages and disadvantages of a joint station at the Arcade site would obtain with respect to an Arcade union station also.

Any union station erected in the Plaza district would be easily accessible from the main lines of the three steam roads, would be adequate to handle all their present traffic and would admit of ready and relatively inexpensive expansion as traffic developed. The accessibility by interurban lines would not quite equal that of a union station at the Arcade site. Except with respect to the collection and distribution of express matter, unification of passenger-terminal facilities at the Plaza would provide all the conveniences for the public afforded by a union Arcade station. If a union station were built at the Plaza, segregation of passenger and freight routes on opposite sides of the river would not be possible. Though segregation would be preferable, this would not be a serious objection. If an east-bank freight line were provided as in applicants' plan the passenger and freight routes could be so arranged as to prevent serious interference between cross lines of high-density passenger and freight traffic. Except with respect to the station-approach bridge over Alameda Street and the high viaduct for vehicular traffic across the river at Aliso Street, a union station under the Plaza plan would not introduce bad crossing situations. It would not act as a barrier to traffic between sections of the city. The importance of Alameda as a trucking street to the industrial district would diminish if the Southern Pacific should cease to maintain its freight station adjacent to the River station yards.

A union station at the Plaza would harmonize with the civic plans and desires of the city. If a union station were built at the Plaza under substantially the plan presented by the California commission, the new money necessary to be raised, less the value of property released from passenger service, would be about $5,500,000. The total investment in passenger facilities under the Plaza plan would approximate $9,500,000. If consideration be taken of the acquisition by the Southern Pacific of the so-called Hanchett lands, about 25 acres of which would constitute approximately two-thirds of the Plaza station site, the new money cost would be reduced to approximately $3,500,000, and the total investment possibly increased to $12,000,000.[12]

[12] The new money cost specified is computed on the basis of deducting as the value of such portion of the station grounds about one-half of the total cost of station lands as hereinbefore determined. The total investment figure just named is determined upon the assumption that the cost of the Hanchett lands to the El Paso & Southwestern was as stated upon argument by counsel for the Southern Pacific, and that the portion thereof necessary for Plaza station grounds should be assigned a proportionate cost of $4,500,000. In using this latter figure we make no assumption as to its reasonableness or propriety.

Unification of passenger-terminal facilities at the Plaza could be arranged so as to result in certain operating economies, but the extent thereof does not appear upon the record. With coach yards as planned for the Southern Pacific and Salt Lake and the existing Santa Fe coach yards, the expense of operation might be somewhat less than under the Arcade plan. Three years would probably be necessary to complete construction under this plan. If the Plaza plan rather than that proposed by applicants were carried out, the elimination of Pacific Electric grade crossings would be delayed, for the reason that there is no specific plan therefor in connection with the Plaza project.

It is clearly inferable from the record that the Santa Fe does not consider the Arcade site ample in size for the most convenient handling of the trains of all three carriers, and that so far as it is concerned operation into the Arcade station would be highly unsatisfactory. The Arcade site could be expanded by closing or deflecting important streets or by elevating the station yard. Assuming such expansion, the expenses of an Arcade station, either joint or union, would be considerably greater than for equally adequate facilities under some other plan. Adequate and convenient union passenger-terminal facilities can be provided in the Plaza area at a considerably less net new money cost than less adequate and convenient facilities under applicants' Arcade plan, and for approximately the same net new money cost as a union passenger terminal of more questionable merit on the present Arcade site.

In view of the right of the State, under the qualifications noted, to determine with respect to various plans for union-terminal facilities the question of adequacy and reasonableness, without clear basis we will not override the determination of its authorities in that regard. The official commitment of the city in favor of a union station in the general area of the Plaza is also entitled to weight on the question of public convenience and necessity. If, upon investigation, it appeared that the State authorities were making unreasonable demands or placing undue burdens upon interstate carriers to the impairment of their ability to perform their duties to the public, it would clearly be our duty under *R. R. Comm.* v. *Southern Pacific Co.*, *supra*, to refuse our consent to the consummation of the project. But where, as here, it appears that the carriers of their own necessities will in any event shortly expend considerable sums for adequate station facilities, and that after fair and painstaking investigation the State authorities have selected a general site as that required by the public convenience and necessity whereon for substantially the same amounts the carriers can provide adequate and convenient union-station facilities, we think the deter-

mination of such authorities should be entitled to considerable weight. The order of the Railroad Commission of California did not specify any particular site within the general area defined nor require a particular plan to be followed. The order required that the defendants submit plans for approval and, when approved, to build in accordance therewith. The defendants at no time made any effort to comply with the order. When the general outlines of the plan are formulated, a spirit of willingness to do and cooperate on the part of all concerned—carriers, city, and State—will overcome many obstacles which now loom large. The record contains some reference to monumental stations and civic pride. The law aims to provide an adequate transportation system with adequate and convenient facilities, and not to burden that system with facilities much more than adequate, or designed less to meet the reasonable requirements of the public than demands based chiefly on aesthetic considerations or advertising value. If such elements are to be provided for in measure beyond that incidental to reasonably adequate and convenient facilities of a character appropriate to the city served, the added expense may not be forced upon the carriers.

For orderly procedure it appears preferable that appropriate certificates in connection with the proceedings now before us should be issued subsequent, rather than prior to, the making of an order by State authority, but that the securing of favorable action on our part be made a prerequisite to the effectiveness of any State order. Such a procedure would enable us to pass upon a specific proposal and obviate the semblance of consenting in advance to construction the extent and expense of which could only be surmised. We think the expression of the Supreme Court in *R. R. Comm.* v. *Southern Pac. Co.*, *supra*, at pag 346, to the effect that our certificate is, in the instances therein specified, "a condition precedent to the validity * * * of any order by the State Commission," is not inharmonious with these views.

FINDINGS

Upon a consideration of all the facts of record we find:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of

Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

3. That the present and future public convenience and necessity require and will require (*a*) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (*b*) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in connection with these

matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record.

HALL, *Commissioner*, dissenting:

I am not prepared to take part in selection of sites and approval or disapproval of plans for railway structures, whether bridge, tunnel, or terminal, all over this broad land. I find nothing in the interstate commerce act which lays upon us any such duty. Certainly no one who participated in framing the provisions of that act as to certificates of public convenience and necessity had union stations in mind. If he had, he was an adept in the use of language to conceal thought.

In these proceedings we have before us an application and a complaint.

The application is by two carriers who seek from us a certificate of public convenience and necessity to the extent that it may be requisite for developing the passenger station of one into the joint station of both, with such extension or construction of line and abandonment of other line as may be appropriate to that end.

The complaint is by Los Angeles, and in effect, by the State commission. They allege no violation by the defendant carriers of any provision of the interstate commerce act. Possibly their complaint should be regarded as an application under paragraphs (18) to (20) of section 1, although I do not think so. Ostensibly it is a complaint under paragraph (21). This distinction at least may be drawn between the application and the complaint, whatever their nature or their sufficiency in other respects; the carriers, as instrumentalities of interstate commerce, seek such authority as we may grant under these paragraphs to enable them to do something. That "something" is to make their transportation facilities and service more nearly adequate for the needs of the public using them.

The complainants come here for such authority as they may need, not to do something, but to require the carriers to do something. That "something" is to construct and maintain a union passenger station, which none of the carriers wants, on a site not of their selection, reached by none of their rails. Neither the city nor any civic body or citizen offers or proposes to contribute anything in land or money to that end. If this complaint be an application under paragraphs (18) to (20), how shall we construe the lack in those paragraphs of even a hint at compulsion? They provide for restraints, or permissions, or both. It is only in paragraph (21) that the power to require appears, and there it is confined to car service, as the term is used in the act, and to extension of carriers' lines.

I am in accord with the construction placed on these paragraphs by the majority report. I merely stress the difference in attitude of the applicants and the complainants before noting my first ground of dissent. This is that the application of the carriers, the only parties before us who propose to do something, is denied.

Plainly they propose a better service than they now afford to the traveling public, a better utilization of property already dedicated to that service. It is their right and their duty to do both without authority from us. But to secure the full benefit of their proposal extension of some main line and abandonment of other main line is necessary. For that they are here. Why should we deny them? We would not if the complainants were not here also. I submit that carriers serving the public with property already devoted to that service should not be restrained from bettering their service because others charged with no such responsibility devise or approve or prefer plans for a substituted service on property which the carriers must go out and acquire at cost in excess of value.

Incidentally the carriers' proposal includes elimination of practically all grade crossings of the Pacific Electric lines in Los Angeles. That feature alone is a contribution to public safety and convenience, if not necessity, which merits and receives the hearty approval of everyone concerned in these proceedings.

My second ground of dissent is the grant, in so far as here made or forecast, of certificates of public convenience and necessity for a union station and for such extension of lines and disuse of other lines as may be incident to its construction and use. There is no magic in unification of passenger terminal facilities. There may be detriment to the traveling public far outweighing the anticipated benefit to Los Angeles, and our concern is, or should be, for the public served rather than for the fruition of civic plans.

Los Angeles is even greater in area than in population. Must those who come and go by rail all pass through one gate or may they

have their choice of several? The record, as reflected in the report, gives no convincing answer to this question. The public convenience, the public necessity, both are to be considered and served if and when our certificates issue in respect of matters within our competency. The union station is not essential to a civic center, as experience has shown. Without entering into details of the Plaza and other plans, it may be noted that the present estimates call for investment of many millions of carrier earnings in property on which no earnings will ever be made, deprive the carriers to that extent of resources now available in time of need, and render useless for carrier purposes the terminal properties in which their investment was long since made on a lower basis of cost.

Any requirement by public authority that carriers invest their capital or earnings in unproductive property beyond what is clearly needed for performance of their public service is a requirement which lessens their ability to properly serve the public. It would seem that the new outlay, by utilization of aerial rights over the station properties or otherwise, could be made to yield compensating return and that the city and the carriers might and should work out in friendly cooperation some satisfactory solution of the problems here presented.

I am authorized to state that COMMISSIONER COX joins in this dissent.

COMMISSIONER WOODLOCK did not participate in the disposition of this case.

APPENDIX 1.

Lines of railway of the defendant carriers

The coast and valley routes of the Southern Pacific Railway connecting Los Angeles with San Francisco and the Sacramento and San Joaquin Valleys, unite at Burbank, about 12 miles north of the Los Angeles station, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the northeast in the vicinity of Pasadena. Here the line crosses to the west bank of the river, and continues southerly along it to the North Broadway Viaduct. Passing under the viaduct the line leaves the river and proceeds southwest along North Spring Street to the northern end of Alameda Street, thence southerly along the latter street to the Arcade passenger station just west of Alameda Street between Fourth and Sixth Streets. The Sunset or El Paso route approaches from the east and crosses the Los Angeles River along Alhambra Avenue and turns south into Alameda Street at North Main Street, a short distance south of the north end of Alameda, and proceeds southerly from thence to the station as do the trains from the north. South of the station the Southern Pacific occupies Alameda Street to the southerly boundary of the city with its line to San Pedro and Santa Ana.

The Southern Pacific has three principal freight yards at Los Angeles. The new classification yard adjoins its main line east of the river and north of the Arroyo Seco, its Midway yard parallels the main line on the west

bank of the river between the Arroyo Seco and the North Broadway Viaduct, and the River station yards are northwesterly of and parallel with the main line along North Spring Street between the North Broadway Viaduct and the north end of Alameda Street. The Southern Pacific coach yards are on Alameda Street near Seventh Street, and its engine terminals on the east bank of the river just south of Alhambra Avenue. Freight from north of Los Angeles destined through for points east moves from the yards southwesterly along North Spring Street to Redondo Street and thence turn easterly into Alhambra Avenue.

The main line of the Atchison, Topeka & Santa Fe from the east through Pasadena follows the Arroyo Seco and crosses to the west bank of the Los Angeles River just north of North Broadway Viaduct. Passing under, it proceeds southerly along the west bank of the river across Alhambra Avenue and Macy and Aliso Streets at grade to its station just south of First Street. For most of the distance south of Alhambra Avenue the passenger line is a little distance from the river. This results in the Santa Fe maintaining two grade crossings at Macy Street and two at Aliso Street. An alternative route from San Bernardino, used principally for eastern freight because of more favorable grades, joins the San Diego line at Fullerton, and enters the city from the southeast. This line crosses the river south of Butte Street and follows north along the west bank of the river to the station. A local line from Redondo and San Pedro joins this line near Butte Street. The principal Santa Fe freight yards lie along the west bank of the river between First and Sixth Streets, but this carrier has a partially developed freight yard east of Los Angeles near Hobart station. Its coach yards lie between Seventh and Ninth Street, and its engine terminals just north of Butte Street, along the west bank of the river.

The main line of the Los Angeles & Salt Lake, herein termed the Salt Lake, enters the city through Hobart from the southeast, and proceeds north up the east bank of the river from Alosta Street to its station at First Street. One local line continues on up the east bank of the river, passes under the North Broadway Viaduct, and follows up the Arroyo Seco to Pasadena. A branch of this line crosses the Arroyo Seco and terminates at Glendale, a suburb about 6 miles north of Los Angeles station. Another local line from the south serves Long Beach and San Pedro and joins the main line between Hobart and the river. The present Salt Lake freight yards lie along the east bank of the river south of First Street to Seventh Street. Its coach yards are south of First Street and its engine terminals just north of Fourth Street. This carrier is constructing new shops, roundhouses, classification yards, and fuel facilities at Hobart Junction, about 3 miles southeast of its present depot and about 4 miles from the Southern Pacific depot. The Salt Lake has a spur which leaves the main line between Hobart and the river and proceeds west across the river and along Butte Street to a connection with the Southern Pacific line at Alameda Street.

APPENDIX 2

Outline of various station plans presented

The Sachse plan.—Under this plan the station would be of the stub-end type, and with its new plaza would occupy [illegible] near the north end of Alameda Street adjoining Main Street on the west, Commercial Street on the south, and San Pedro Street extended on the east. The station building or head house would face south at the north end of Los Angeles Street, and the sta-

tion tracks would extend north to a connection with the Redondo Street wye. Southern Pacific trains from the north would enter the station over the present tracks past the River station freight yard, and those from the east by way of Alhambra Avenue, as at present; Santa Fe and Salt Lake trains from Pasadena would be brought in over the Southern Pacific tracks past River station yard by means of connections near the North Broadway bridge. Salt Lake and Santa Fe trains entering the city from the south would proceed up the west bank of the river and reach the station over the tracks on Alhambra Avenue.

As recommended to the railroad commission by its engineers, the larger plan made provision for the construction of a subway along Main Street for the Pacific Electric from its station at Sixth Street to the station at the Plaza and for some distance beyond to connect with present or prospective rapid transit lines to the east. The Pacific Electric is an extensive interurban system. It crosses many busy streets in Los Angeles at grade. The larger plan also contemplated the use of the River station freight yard for a union coach yard, and for the provision of necessary freight yards in lieu thereof north of the Arroyo Seco. Defendants severely criticised this feature. The same coach-yard arrangement as is contemplated under the Arcade plan would be practicable under either the Sachse station plan or the larger plan. To carry out the comprehensive project would require that some 65 acres of private property be condemned, and 19.5 acres of streets be closed. The improvements on this area are for the most part old, and many are poorly constructed, but some are substantial structures. The city charter, unless amended, would not permit the construction of a subway along Main Street. Due to the scope and completeness of the larger plan, the cost of carrying it out would be considerably greater than the cost of effectuating applicants' proposal. Because of its relation to the comprehensive plan, the cost of a union station under the Sachse plan would also doubtless exceed the minimum amount necessary to erect a union station in the Plaza area defined in the State commission's order. Apparently for this reason and the possibility of confusion with the larger plan, complainants did not, upon the hearing of the consolidated cases or on brief, stress the comparative merits of the Sachse union station plan.

The Plaza plan.—The site contemplated under the Plaza plan covers about 38 acres in the southerly portion of the area east of Alameda Street, north of Aliso Street, south of Macy Street, and west of the river. The station would be of the stub-end type. The depot would front on Alameda Street and would face the Plaza. Alameda Street would be relocated a little to the west just in front of the station grounds and the Southern Pacific tracks thereon be permitted to remain. The station tracks would extend easterly to the river to a point near Commercial Street. A double-track viaduct to carry Aliso Street and the Southern Pacific-El Paso line over the river would be constructed somewhat south of Aliso Street as at present. Vehicular traffic and the Pacific Electric would occupy the upper deck. Passenger trains coming down the river from the vicinity of the Arroyo Seco and those coming up the river from the vicinity of Butte Street would follow the west bank to the station turnouts near Aliso Street. Under this plan no provision is made for joint coach-yard facilities. Presumably the carriers would follow the same arrangement as with respect to the Arcade plan.

The station building would be 400 feet long, 120 feet wide, and 60 feet high, with the upper floor substantially on a level with the Plaza, and reached by a bridge over Alameda Street. The lower floor would be level with Alameda Street and accessible for taxicabs and autos. A concourse 400 feet long, 50

wide, and 20 feet high would be reached from both floor levels by means of ramps. It would be 4.5 feet below the level of the upper floor and 8 or 13 feet above the Alameda Street level, depending upon whether impaired or full clearance were allowed under the bridge across Alameda Street. The station tracks at the concourse would be elevated 8 feet above Alameda Street, and would be on a level with the concourse in the case of impaired clearance, or 5 feet below it in the case of full clearance. The bridge across Alameda Street would be supported by steel columns dividing the street into three parts. The middle portion, 30 feet wide from center to center of columns, would provide for the double-track line of the Southern Pacific. The side portions would be 33 feet from center of columns to property line and would each give room for a 22-foot roadway and sidewalk.

The station yard would have 15 tracks ranging in length from 1,000 to 1,300 feet, and would readily admit of expansion. There would be a double-track approach over the Aliso Street bridge and also from the north and south on the west bank of the river. The throat of the yard would have five tracks. At present it is practically a level grade from the river bank to Alameda Street, but the 8-foot fill at the station and the depression of the river-bank tracks in connection with the proposed river viaduct program would result in a grade of approximately 0.5 per cent on the station tracks and compensated grades of 1.24 per cent on the tracks to the Aliso Street bridge, and 0.94 and 1.3 per cent, respectively, on the north-and-south wye tracks connecting the throat of the yard with the tracks on the west bank of the river. If the plan for depressing the river-bank tracks were modified by making the elevation at the Aliso Street bridge about the same as at the throat of the station yard, the compensated grades on the north leg of the wye and the tracks to the bridge would approximate 0.5 per cent and on the south leg of the wye 1.13 per cent. This would increase the grade on the river-bank tracks between the south leg of the wye and First Street from 0.485 to 0.665 per cent. The curvature on the north leg of the wye is 13°, and on the south leg 12° 30'. An interlocking plant would be located adjacent to the Aliso Street bridge near the west-bank tracks.

Under this plan only industrial switching service would remain on Alameda Street. The balance of the Southern Pacific freight traffic would be diverted to the river banks. Abandonment of small portions of Lyon and Vignes Streets near the throat of the station yard would be necessary. Complainant has indicated its willingness to abandon such streets as may be necessary for the construction of any union station in the Plaza area.

The Arcade plan proposed by applicants.—The Arcade station site and depot building have been described in the report. Under applicant's plan all eight of the present station tracks save one would be stubbed at Fourth Street, the northern end of the yard, and four additional station tracks added. The tracks would range in capacity from 10 to 20 cars and would have an average capacity of 16 cars. The remaining track across Fourth Street would furnish access to the railway-mail post office, the express yard, a plant of the Los Angeles Ice & Cold Storage Company, and would connect with the Alameda Street tracks at Third Street. As at present, access to trains would be by means of a subway under the station tracks, with ramps to the umbrella sheds and station building. From the south end of such sheds the station tracks would be gathered into the two-track throat near Sixth Street. A spur from the east side of the yard would connect the throat with the Alameda Street tracks. In order to secure a separation of grades, the station yard would be graded up on a 1 per cent grade from the present umbrella

sheds toward the viaduct at the south end of the yard, and Sixth Street and Alameda Street would both be depressed 5 feet.

From the south end of the station yard the viaduct would extend across Sixth Street on a 10° curve and turning eastward would cross Alameda Street a short distance south of its intersection with Sixth Street. From thence it would continue east, south of and parallel to Sixth Street, to the west bank of the river. The grade on the curved viaduct mentioned would be a compensated grade of 1 per cent. The viaducts would be ballasted deck structures on concrete pillars or columns, with 20-foot spans between streets and clear spans over principal street crossings. From the west bank of the river curved bridges would extend to the Salt Lake right of way across the river, one to the north and one to the south. From the north end of the northerly curved bridge the track would descend to grade. Connections would be provided with the Southern Pacific-El Paso line at Alhambra Avenue and with its main line from the north on the east bank of the river north of the Arroyo Seco. The Salt Lake line to Pasadena and Glendale would have access to the station in similar manner. The southerly curved bridge would continue south along the east bank as an elevated structure, pass over Seventh Street and reach grade near Ninth Street. Connection with Alameda Street and the Southern Pacific line from the south would be by means of the Butte Street bridge reached by a curved track on the east bank. Salt Lake trains from the east and south would reach the station over the southerly curved bridge also. Under this plan only night switching of freight for industries would remain on Alameda Street. The track along Alameda Street would be cut near Sixth Street and freight from the River station yard for industries on Alameda Street south of Sixth Street would move east on Alhambra Avenue to the east bank of the river and thence to Alameda Street by way of the Butte Street bridge. The Southern Pacific intends, if the applications are granted, to relocate its coach yards adjacent to its shop grounds on the east bank of the river south of Alhambra Avenue. The Salt Lake will have its coach yards at Hobart.

100 I. C. C.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 6th day of July, A. D. 1925.

Finance Docket No. 3569

In the matter of the application of the Southern Pacific Company, Southern Pacific Railroad Company, and the Los Angeles & Salt Lake Railroad Company for a certificate of public convenience and necessity

Investigation of the matters and things involved in the above-entitled proceeding having been had, and the said commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the application herein be, and it is hereby, denied.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 192

107 EXHIBIT C.

Decision No. 18593.

THE MUNICIPAL LEAGUE, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California,

VS.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AND SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 970.

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California,

VS.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 971.

THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, a Corporation of the Citizens of the City of Los Angeles, State of California,

VS.

THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 972.

THE CITY OF PASADENA, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, AND CITY OF LOS ANGELES.

Case No. 974.

THE CITY OF PASADENA, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES, AND SALT LAKE RAILROAD COMPANY, AND CITY OF LOS ANGELES.

Case No. 980.

108 THE CITY OF SAN GABRIEL, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND CITY OF LOS ANGELES.

Case No. 981.

THE CITY OF SOUTH PASADENA, a Municipal Corporation,

VS.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND CITY OF LOS ANGELES.

Case No. 983.

In the Matter of the Application of SOUTHERN PACIFIC COMPANY and LOS ANGELES AND SALT LAKE RAILROAD COMPANY for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California.

Application No. 3346. Decided July 8, 1927.

Transportation—Steam Railroad—Station Accommodations—Union Terminal—Trackage Facilities—Abandonment—Extension.—Public convenience and necessity permit the abandonment of all passenger and freight switching on the main line of the Southern Pacific Company on Alameda Street, from College Street to East 15th Street, inclusive, in the city of Los Angeles.

Existing Facilities—Extension of—Not Required.—The extension of new or present facilities as described in the application of Southern Pacific Company and Los Angeles and Salt Lake Railroad Company is not required by public convenience and necessity.

Union Terminal—Public Necessity—Track Rearrangement.—The extension of the main lines of defendant railroads so as to serve a union passenger terminal in that portion of Los Angeles bounded by Commercial, North Main and Redondo Streets, Alhambra Avenue and the Los Angeles River and the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal, is required by public convenience and necessity.

109 Expenses—Ability of Carriers—Not Impaired.—The expenses involved therein will not impair the ability of the railroad companies to perform their respective duties to the public.

Abandonment—Main-line Tracks.—Public convenience and necessity will permit the abandonment by defendants of such portions of their main lines, or the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of its passenger or freight routes, tracks or terminal facilities in connection with the establishment of such union passenger station and terminal.

Main-line Tracks—Joint Use.—The use of so much of the terminal main-line tracks of any of defendants by any other defendant necessary in the proper operation of such union station will be in the public interest.

Cost—Commission's Estimate.—A union passenger station can be constructed by defendants, with incidental track arrangement, according to the Commission's plan, at a cost of approximately $10,000,000.

Union Station—Public Interest.—Such union passenger station would be in the public interest and ought to be constructed.

Commission's Order—Conditional Provision—Interstate Commerce Commission Authorization.—The Commission's order to become effective upon issuance of necessary order or certificate by Interstate Commerce Commission. Commission's attorney directed to file petition with Interstate body for such authorization.

Hugh Gordon, for Central Development Association.

James H. Howard, City Attorney, and *Roscoe R. Hess,* Deputy City Attorney, for City of Pasadena.

C. W. Durbrow, for Southern Pacific Company.

A. S. Halsted and *Fred E. Pettit, Jr.,* for Union Pacific and Los Angeles and Salt Lake Railroad Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company.

Frank Karr, for Pacific Electric Railway Company.

Jess. E. Stephens, City Attorney, *Milton Bryon,* Deputy City Attorney, and *Max Thelen,* Special Counsel, for City of Los Angeles.

H. H. Sanborn, A. B. Roehl and *Spencer Thorpe,* for W. H. Daum, Intervener.

H. R. Brashear, for Los Angeles Chamber of Commerce.

George A. Damon for Regional Planning Commission and City Planning Association.

Will D. Gould, for Northwest Association.

By the Commission:

Opinion.

The facts and issues primarily involved in these
110 proceedings, together with the early history thereof, are to be found in our prior Decisions Nos. 8901 and 9838 herein, and require no repetition here.

Action of State Supreme Court.

Subsequent to the rendition of Decision 9838, writs of review were obtained from the California Supreme Court by The Atchison, Topeka and Santa Fe Railway Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, and the Southern Pacific Company, and on December 19, 1922, that court annulled our said Decision No. 9838 upon the ground that, by reason of the enactment by Congress of certain amendments to the Interstate Commerce Act in 1920:

"Full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce * * * has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California * * * has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (*The A., T. & S. F. Ry. Co. vs. Railroad Commission,* 190 Cal, 214; 211 Pac. 460.)

Action of United States Supreme Court.

Affirming this result, but upon narrower grounds, the United States Supreme Court, in proceedings brought before it under writs of certiorari obtained by this Commission, declared, on April 7, 1924, that the only question before it was "whether the power to direct a new union station with its incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920," and held that:

111

"Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

The court further said that such action requires:

"a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission," together with a finding "that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public." (*Railroad Commission vs. Southern Pacific Company,* 264 U. S. 351; 68 L. ed. 713.)

Action of Interstate Commerce Commission

Subsequent to the rendition of the California Supreme Court's decision above mentioned, but prior to that of the United States Supreme Court, the city of Los Angeles filed with the Interstate Commerce Commission a petition asking that these carriers be required to erect a union passenger station in the city of Los Angeles substantially in the manner ordered by this Commission in its Decision No. 9838 (I. C. C. Docket No. 14778). With reference to this action, the United States Supreme Court declared that the course pursued by the city of Los Angeles was correct. This Commission intervened on behalf of the city in said proceeding, and after lengthy hearings, the Interstate Commerce Commission, on July 6, 1925, issued its order.

Upon the rendition of the decision of the United States Supreme Court two other applications were filed with the Interstate Commerce Commission. In the first of these (Finance Docket No. 3556), the Southern Pacific Company and Southern Pacific Railroad Company sought authority to abandon main line train operation over a portion of their railroad along Alameda street in Los Angeles. In the second (Finance Docket No. 3569), these companies
112 and the Los Angeles and Salt Lake Railroad Company together sought from the Interstate Commerce Commission certificates of public convenience and necessity approving a plan for the joint use of the present Southern Pacific passenger station in Los Angeles (sometimes referred to as the "Arcade station") by said companies substantially in the manner requested several years ago by these carriers in Application No. 3346 before this Commission, which application had been dismissed by us in our Decision No. 9838 herein. In its Decision of July 6, 1925, above mentioned, the Interstate Commerce Commission found that public convenience and necessity does not require the construction proposed and described in this connection, and the application of these carriers involving authority to construct extensions looking toward such joint use of the said Southern Pacific station (Finance Docket No. 3569) was denied.

Upon the issue presented by the complaint of the city of Los Angeles, however, the Interstate Commerce Commission declared that the service afforded by the present passenger stations of the Atchison, Topeka and Santa Fe Railway and Los Angeles and Salt Lake Railroad is "unreasonable and inadequate," and that the expenditure of considerable sums of money must at once be made in order to provide reasonable and adequate facilities in lieu thereof; that railroad service, except industrial freight-switching service, be eliminated from Alameda street, and that such action will force the Southern Pacific Company either to provide new means of access to its Arcade station or to abandon the same and provide other facilities, the expenditure of substantial sums of money being required on the part of this carrier in either event. The Interstate body then found that these carriers are in a position to provide reasonable and adequate station facilities, and that "the ex-

pense involved will not impair their ability to per-
113 form their duties to the public." Thus the first requirement of the United States Supreme Court was met.

We shall not here recount in detail the discussion of the Interstate Commerce Commission upon the general subject of a union passenger terminal in Los Angeles. Suffice it to say that that body approved the selection of a site for such a union passenger terminal within a described area near the Plaza in Los Angeles which had been made in our Decision No. 9838 herein, and, upon consideration of the evidence before it, and after a discussion of the advantages of such a solution of this problem, it declared that, in its opinion, a union passenger terminal could be erected upon the said Plaza area in compliance with our former order for a sum aggregating approximately $9,500,000 or at a new money cost of about $5,500,000. A large portion of this particular site is already owned by the Southern Pacific Company. The Interstate Commerce Commission further declared that future extensions or enlargements at the Arcade site would be considerably more expensive, in its opinion, than at the Plaza area, and it added that

"Adequate and convenient union passenger terminal facilities can be provided in the Plaza area at a considerable less net new money cost than less adequate and convenient facilities under applicants' Arcade plan, and for approximately the same net new money cost as a union passenger terminal of more questionable merit on the present Arcade site."

The Interstate Commerce Commission then made the following findings:

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda street from College street to East Fifteenth street, inclusive, in the city of Los Angeles, California.

2. That neither the present nor future public con-
114 venience and necessity require or will require the construction or extension by applicants of new or

existing main lines of railroad in the city of Los Angeles, California, as described in the application in Finance Docket No. 3569.

3. That the present and future public convenience and necessity require and will require (*a*) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, California, so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (*b*) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incident to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alameda street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, California, or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, California, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants, or any of them, in ac-

cordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what
115 action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carriers' ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

Thus the Interstate Commerce Commission provided for compliance with the second requirement of the United States Supreme Court.

Further Proceedings Before this Commission

Subsequent to the rendition of this decision, and upon request of certain of the parties to these proceedings, this Commission reopened the above-entitled matters for further consideration and determination. Hearings were had before the Commission sitting *en banc;* evidence was taken from a large number of interested persons dealing with the subject from every angle, and voluminous briefs have been filed.

In view of our previous findings and order herein, and of the order and decision of the Interstate Commerce Commission relating to this matter, it would appear that in these reopened proceedings the chief question before us is whether, since the rendition of our Decision No. 9838 herein, any facts have developed or any events have occurred of such character as to justify action on our part re-
116 versing the position which we have heretofore taken in this matter.

At the hearings in the reopened proceedings, after making certain technical objections to our jurisdiction to proceed further with these matters—which objections were overruled—the carriers again presented their plan for a solution of the passenger terminal problem in Los Angeles by the use of separate facilities, including the joint use of the Arcade station of the Southern Pacific Company by that Company and the Salt Lake Railroad Company, together with the erection of a new station on the part of the Santa Fe at its present passenger station site. While we have listened to this testimony and have received briefs dealing with the subject, it is our opinion that, in view of the action of the Interstate Commerce Commission in this matter, we could not now—even if we were so disposed—authorize or direct the execution of this plan. The proposal of the carriers, as presented to us in these reopened proceedings, is in all essential respects similar to that formerly presented to us in Application 3346, heretofore dismissed by us, and also to that presented to the Interstate Commerce Commission in Finance Docket No. 3569, which was denied. Except for slight changes in detail, and save for certain other minor changes in the proposed participation of the Pacific Electric Railway Company in the plan, it is the same as hereinbefore dismissed. Although in these reopened proceedings we have given full opportunity for the production of all testimony desired to be offered in support of this plan for separated facilities, nothing, in our opinion, has been added to the record already before us in this connection which would impel us to reverse our former opinion as to this proposal. We will, therefore, again dismiss this application on the part of the carriers.

Since the date of our Decision No. 9838, certain of the dangerous grade crossings along the Los Angeles
117 River have been and are being eliminated by means of the erection of viaducts crossing the river and the railroad tracks lying adjacent thereto and on both sides thereof, under and by virtue of orders issued by this Commission in a proceeding known as Application No. 9671 filed by the city of Los Angeles, county of Los Angeles, Atchison, Topeka and Santa Fe, Los Angeles and Salt Lake and Pacific Electric Railway companies. The Alameda street grade crossings have not as yet been eliminated, nor has the Southern Pacific Company moved to eliminate main line train movements thereover—though conditions at these crossings are admittedly becoming worse day by day—save by again pressing before this Commission and the Interstate Commerce Commission the carriers' plan for separated facilities herein dismissed. Moreover, the Alameda street situation has been somewhat changed and apparently aggravated by the interjection of certain Salt Lake trains using a portion of that street as a means of temporary access to the Arcade station. Some freight movements have been transferred by the Southern Pacific Company from Alameda street to the river bank tracks, but the evidence indicates that the situation along that street as a whole is no less aggravated than it was at the time of our former order herein.

Much evidence was introduced by the carriers in these reopened proceedings dealing with certain proposed participation of the Pacific Electric Railway, an electric street and inteurban carrier and Southern Pacific subsidiary, in the carriers' separated facilities plan. There were also presented a number of proposals for union passenger terminals in the city of Los Angeles differing to a greater or less degree from those hitherto filed herein, and located both within the so-called Plaza site or area, as defined in our Decision No. 9838 herein, and in other locations.
118 Such proposals were presented by W. H. Dunn, who filed a complaint against these carriers (Case No. 2177) praying for an order directing them to erect a union passenger depot at a site on the east bank of the Los Angeles River between Seventh and Ninth streets; by the Municipal League of Los Angeles for a "twin station" with

head houses on each side of the river near Sixth street; by George D. Hall for a union station to face a new Plaza at the junction of Spring street and Sunset boulevard; by the Allied Architects' Association through Charles H. Cheney, for a station with head house fronting on Temple street and Los Angeles street, with tracks extending north from Temple street between Los Angeles and San Pedro streets; by Joseph A. Stark for a station in an area bounded by Los Angeles, San Pedro, First and Market streets, fronting on Los Angeles street; by A. D. Austin for a station in an area bounded by First, Plaza, Main and Los Angeles streets; and, after inquiry upon our part, a plan prepared in the offices of the carriers for a station within the Plaza area considerably greater in extent and different in character from those heretofore presented for a station within that area.

We have carefully considered the testimony adduced in favor of each of these several proposals, together with the briefs filed in support thereof, and while some of these plans appear to possess certain merit, it is our opinion that in the case of none of them has evidence or argument been produced before us sufficient to justify us in reversing our findings and rulings heretofore entered herein and presented to and approved by the Interstate Commerce Commission.

In this connection we should state that further testimony was presented, both by the city of Los Angeles and by certain members of this Commission's staff, upon the question of the availability, accessibility and propriety of the Plaza area, as defined in our Decision No. 9838 herein, and
119 in the Decision of the Interstate Commerce Commission in Docket 14778, for a union passenger terminal station in Los Angeles. Much testimony was also adduced from various sources dealing with the probable cost of such a station. This testimony, in our opinion, fails to support the contention made on many occasions by the carriers that this plan involves the expenditure of "from twenty-five to forty-five millions of dollars." We find no basis in the evidence before us which would make possible such a contention, and we are of the opinion that the findings made by the Interstate Commerce Commission as briefly outlined above, to the effect that an adequate union passenger ter-

minal station, together with the necessary facilities for access thereto, can be constructed within this area for an amount approximately $9,500,000, and at a net new money cost not to exceed approximately $5,500,000, are not subject to serious question. Much of the testimony brought before us in these reopened proceedings concerned a proposal for a union station in the Plaza area presented by George S. Hill of this Commission's staff. (Commission's Exhibit 4-b herein.) This proposal is identical in all essential respects to the plan suggested by Mr. Hill before the Interstate Commerce Commission, that body having had it before it as illustrative of the possibilities of the Plaza area.

In its analysis of probable costs, the Interstate Commerce Commission has set forth its conviction that adequate passenger terminal facilities can be constructed by these carriers in this area, together with all necessary trackage connections and rearrangement for a sum which it declares to be reasonable and proper. We find in the testimony before us no reason to doubt that the findings of probable cost so made by the Interstate Commerce Commission are correct, and we are of the opinion that adequate passenger terminal facilities can be erected upon this site for a cost of
120 approximately $10,000,000 gross, and of approximately $5,500,000 net new money.

The Interstate Commerce Commission has made its findings definitely denying the application of the carriers to put into effect their plan for separated passenger terminal facilities, and it has also found that upon the rendition of a lawful order of this Commission requiring the erection of a union passenger depot within this area, under plans not materially differing from those presented to it, it will issue its certificates in connection with these matters under the requirement of the decision of the United States Supreme Court.

We shall therefore enter herein an appropriate order. The effectiveness of our order herein will be specifically conditioned upon the promulgation by the Interstate Commerce Commission of such further certificates and findings as may be necessary or proper to authorize the construction, extensions and abandonment herein directed, it being our intent and purpose that the further findings and certificates mentioned by the Interstate Commerce Commis-

sion in its Decision in its Docket No. 14778 and its Finance Docket No. 3556 be made prior to this order going into effect. We will direct our Attorney to call this matter to the attention of the Interstate Commerce Commission by proper petition.

Order.

Complaints and an application having been filed, as above entitled, said matters having been reopened for further hearing and determination, hearings having been had, testimony having been presented, briefs having been filed, and said matters having been submitted for decision, the Commission having considered said testimony and briefs, and being now fully informed in the premises, and basing its order upon the findings hereinbelow set forth
121 and upon such other findings and statements of fact as are included in the opinion herein:

It is hereby found as a fact;

(1) That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda street from College street to East Fifteenth street, inclusive, in the city of Los Angeles.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the city of Los Angeles, as described in Application No. 3346 and in the record adduced herein.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the city of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment or service on Alameda street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, or of the operation of all or any portion of the present train service thereon, as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city described in paragraph three (3) above is in the public interest and is practicable, without, in our opinion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the city of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14778, to which reference has been made hereinabove.

(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

(10) That said construction ought reasonably to be made.

Wherefore, *It is hereby ordered:*

(1) That the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to construct and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably neceessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars, in substantial compliance
124 with the plan outlined in Commission's Exhibit 4-b herein.

(2) Work upon the construction of said union passenger station shall commence within ninety days after the effective date of this order, and shall be completed within three years after said date.

(3) Upon and after the construction of said union passenger station the operation by defendant Southern Pacific

Company of passenger and freight train service, excepting only industrial freight-switching service during hours hereinafter to be prescribed by proper authority, over that portion of its railroad between College street and East Fifteenth street, inclusive, in the city of Los Angeles, shall be abandoned and discontiued.

This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates, or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission. To which end,

It is hereby further ordered, that the attorney of this Commission forthwith file with the Interstate Commerce Commission a copy of this order, together with such appropriate petition or application as may be necessary in the premises, requesting and praying that the Interstate Commerce Commission issue such certificates or other appropriate order or orders as may be requisite or proper in order to render this order effective.

The Railroad Commission reserves the right to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require.

It is hereby further ordered, that Application No. 3346, as above entitled, be and the same is hereby dismissed.

Dated at San Francisco, California, this eighth day of July, 1927.

126 EXHIBIT D.

Before the Interstate Commerce Commission.

Docket No. 14788.

CITY OF LOS ANGELES, Complainant,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY, PACIFIC Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, Atchison, Topeka & Santa Fe Railway Company, and Union Pacific Railroad Company, Defendants.

Finance Docket No. 3556.

In the Matter of Application of SOUTHERN PACIFIC COMPANY and SOUTHERN PACIFIC RAILROAD COMPANY for a Certificate of public Convenience and Necessity.

Petition of City of Los Angeles for Issuance of Certificates and Making of Final Order.

Comes now City of Los Angeles, the complainant in said Docket No. 14,778, and respectfully petitions the Interstate Commerce Commission to grant the relief hereinafter set forth and in support of said petition respectfully shows:

I. In the month of March, 1923, the City of Los Angeles filed with the Interstate Commerce Commission its complaint in said Docket No. 14,778 asking that after due hearing and investigation the Commission make its order or orders commanding the defendant steam railroad
127 carriers, among other matters, to take action as follows:

(1) To construct and thereafter operate and use a union passenger depot and appurtenances on a site located within that portion of the City of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, and to acquire such land, if any as may be necessary for said purpose;

(2) To abandon the operation of the main line tracks of Southern Pacific Railroad Company on Alameda street in the City of Los Angeles from College street to East Fifteenth street, inclusive, for the operation of passenger trains and also freight trains except local freight switching; and

(3) To construct or acquire such structures, facilities, tracks and other property, to make such extensions or abandonments of railroad lines or other facilities or of the operation thereof, and to arrange for such joint or other use of tracks or terminal facilities then constructed or to be constructed, within the City of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the matters specified in the prayer for relief or any portion thereof.

The City also asked this Commission to make such other or further order or orders in furtherance of the relief asked for as the Commission might find to be just and equitable and in the public interest.

The area within which this Commission was thus asked to order the defendant carriers to construct and thereafter use a union passenger depot and appurtenances was the identical area which had theretofore been specified by the Railroad Commission of California in its Decision No. 9838, made on December 6, 1921, in the Los Angeles Union Passenger Depot Cases, copy of which decision is attached as Exhibit No. 3 to the complaint of the city of Los Angeles in said Docket No. 14,778. In said Decision No. 9838, all 5 members of the Railroad Commission of California concurred.

Public hearings in said Docket No. 14,778 were held before Commissioner Clyde B. Aitchison in Los Angeles on July 5, 6, 7, 9, 10 and 11, 1923, and before Examiner Joseph F. Eshelman on June 19, 20 and 21, 1924. The entire
128 record of the Railroad Commission of California in the proceedings which culminated in said decision of December 6, 1921, was made a part of the record of this Commission in said Docket No. 14,778.

On July 6, 1925, this Commission made and filed its decision in said Docket No. 14,778 and in Finance Dockets Nos. 3,556 and 3,569, which had been consolidated with said

Docket No. 14,778 for hearing and decision. (100 I. C. C. 421.)

In its said decision, this Commission, after making a careful and exhaustive review of the record in its bearing on every issue in the proceeding, made the following findings:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda street from College street to East Fifteenth street, inclusive, in the City of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the City of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

(NOTE. This was the so-called Carrier Plan. The application in said Finance Docket No. 3569 was denied by formal order of this Commission.)

3. That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective lines of steam railroad in the City of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal without that portion of said city bounded by Commercial street, North Main street, Redono street, Alhambra avenue and the Los Angeles River, which they or any of them may construct and establish in accordance with lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the proceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

129 5. That, in addition to the abandonment of service on Alameda street as above authorized, the present

and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carrier of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in acordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

The Commission entered an order denying the application in Finance Docket No. 3569, covering the so-called Carrier Plan.

The Commission further said:

"We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14,778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants."

II. Subsequent to said decision of this Commission, namely, on October 3, 1925, the Railroad Commission of California made and entered its orders instituting further hearings on the subject of the passenger station facilities of the three steam railroads in Los Angeles. Hearings

were thereafter held on said subject on 27 days from November 30, 1925, to August 11, 1926, inclusive. Testimony covering 2,959 additional pages of the record was taken.

The proceedings were finally submitted on briefs on
130 August 11, 1926, at which time the Railroad Commission had before it the testimony of 85 witnesses covering 5,492 pages of the record and also 302 exhibits.

Thereafter, on July 8, 1927, the Railroad Commission of California made and filed its Decision No. 18,593 in said proceedings. This decision was concurred in by all 5 members of the Railroad Commission, 4 of whom became members of the Commission subsequent to the Commission's said Decision No. 9,838 of December 6, 1921. A true copy of said Decision No. 18,593 is attached to this petition, marked "Exhibit A," and made a part hereof. A true copy of Railroad Commission's Exhibit 4(b), which is referred to in the order in said Decision No. 18,593, is attached to this petition, marked "Exhibit B" and made a part hereof.

After making findings of fact identical with the findings made by the Interstate Commerce Commission in its said decision of July 6, 1925, together with a number of additional findings, the Railroad Commission of California made and entered its order as follows:

(1) That the defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to construct and thereafter operate a union passenger station within that portion of the City of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000.00), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein.

(2) Work upon the construction of said union passenger station shall commence within ninety (90) days after the

effective date of this order, and shall be completed within three (3) years after said date.

131 (3) Upon and after the construction of said union passenger station the operation by defendant Southern Pacific Company of passenger and freight train service, excepting only industrial freight switching service during hours hereinafter to be prescribed by proper authority, over that portion of its railroad between College street and East Fifteenth street, inclusive, in the City of Los Angeles, shall be abandoned and discontinued.

The general area within which said union passenger station is to be constructed, as said area is described in said paragraph (1) of said order, is the identical area which was designated in the Railroad Commission's said decision No. 9,838 of December 6, 1921, and was specified in the Interstate Commerce Commission's said finding of fact in its said decision of July 6, 1925, herein.

The portion of the railroad operated by the Southern Pacific Company, as referred to in said paragraph (3) of said order, is located on and along Alameda street in the City of Los Angeles.

The Railroad Commission's said order of July 8, 1927, further provides as follows:

"This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission."

Said order further dismissed a proceeding known as Application No. 3,346 in which certain of the steam railroad carriers asked the Railroad Commission for authority to

make effective the so-called Carrier Plan for separate passenger terminal facilities. This is substantially the
132 same plan which the Railroad Commission had found to be not in the public interest and dismissed in its said Decision No. 9,838 of December 6, 1921, and as to which the Interstate Commerce Commission made the same finding when it entered its order of July 6, 1925, dismissing said Finance Docket No. 3,569.

III. Subsequent to this Commission's said decision of July 6, 1925, namely, at a special election held on April 30, 1926, the electors of the City of Los Angeles overwhelmingly voted for the affirmative on the question of whether a union railway passenger terminal for all steam railroads should be established in the City of Los Angeles. The railroads at said election vigorously urged the electors to vote for the negative and in support of their position urged upon the electors the so-called Carrier Plan for separate passenger station facilities, which plan the Railroad Commission of California and this Commission had found and declared to be not in the public interest.

At the same election, there was also submitted to the electors the question whether a union railway passenger terminal should be constructed in the general area (frequently referred to as the Plaza area) theretofore designated and described by the Railroad Commission and this Commission in their said respective decisions. The question was so worded that there were pitted against the affirmative not merely such electors as did not favor *any* union railway passenger terminal at all, but also all who favored any of the other numerous suggested locations. Nevertheless, a majority of the electors voted in support of said Plaza area.

IV. Paragraph (3) of section 3 of the Interstate Commerce Act, as amended on February 28, 1920, reads in part as follows:

133 "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or prop-

erty to and from their several lines and those connecting therewith. * * *"

In *Hastings Commercial Club* v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 69 I. C. C. 489, this Commission, speaking through Commissioner Atchison, said (p. 494):

"The cases are numerous holding that *depots*, platforms, spur or side tracks, station grounds and elevators are parts of railroad *facilities*."

In *St. Louis & S. F. R. Co.* v. *Miller*, 31 Okl. 801, 123 Pac. 1047, the Supreme Court of Oklahoma held (p. 1049):

"The term 'facilities' as used in section 20, Art. 9 of the Constitution (of Oklahoma), includes a railroad depot."

In its said decision of July 6, 1925, herein, this Commission expressly and, we believe, inevitably assumed that the above quoted provision of paragraph (3) of section 3 of the Interstate Commerce Act, as amended,

"makes it the *duty* of carriers to maintain *union-station facilities* in a case where separate facilities would not be reasonable and proper."

Nevertheless, the Commission failed to find in the act any provision conferring upon it specifically the authority to make an affirmative *order requiring* the carriers to perform the *duties* specified in said portion of paragraph (3) of section 3 of the act.

Prior to this Commission's said decision of July 6, 1925, herein, it had been held in three decisions, one by this Commission and two by the courts of last resort of the states of New York and Ohio, respectively, that this Commission has the authority to make an *affirmative order requiring* carriers to observe the *duties* prescribed by said portion
134 of said paragraph (3) of section 3 of the act.

In *Pittsburgh & West Virginia Railway Co.* v. *Lake Erie, Alliance and Wheeling R. R. et al.*, 81 I. C. C. 333, this Commission held (p. 334):

"In our opinion, under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic be-

tween their respective lines, *we have power* to deal with the issue here presented and *to make an affirmative order* in the premises if warranted by the record."

In *People ex rel. New York Central R. Co. v. Public Service Commission of New York*, 233 N. Y. 113, 119-121, 135 N. E. 195, 22 A. L. R. 1073, the Court of Appeals of New York decided that under the provisions of said portion of paragraph (3) of section 3 of the act, as amended, this commission has the exclusive authority to *require* carriers to construct connecting tracks for the interchange of traffic a portion of which is interstate traffic. On March 13, 1922, the Supreme Court of the United States (258 U. S. 621) denied a petition for a writ of *certiorari*.

In *Lake Erie, A. & W. R. Co.* v. *Public Utilities Commission of Ohio*, 109 Ohio St. 103, 141 N. E. 847, the Supreme Court of Ohio reached the same conclusion on the subject of this Commission's authority to issue orders requiring the performance by carriers of the duties prescribed by said portion of paragraph (3) of section 3 of the Act.

In the *Los Angeles Union Depot* case (264 U. S. 331), it appeared that the Supreme Court of the United States knew that the City of Los Angeles had filed its complaint with this Commission in said Docket No. 14,778 herein and that in said complaint the City had asked for an *affirmative order requiring* the defendant steam railroad carriers to construct and operate a union passenger depot in the City of Los Angeles. In the next to the last paragraph of its decision, the Supreme Court said:

135 "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an *order* to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this court, the matter is held under consideration."

Understanding clearly the nature of the relief which the City of Los Angeles had asked from this Commission, the Supreme Court continued:

"For the reasons given *we think the course taken by the City of Los Angeles was the correct one.*"

Subsequent to this Commission's said decision of July 6, 1925, herein, it has been held in two decisions, one by this Commission and one by the Supreme Court of the United States, that this Commission has the authority to make an affirmative order requiring carriers to perform the duties prescribed by said portion of said paragraph (3) of section 3 of the Act.

In *Chamber of Commerce, Breckenridge, Texas* v. *Wichita Falls, Ranger & Fort Worth R. Co.*, 109 I. C. C. 81, decided on March 4, 1926, the complaint was for the establishment of connections between tracks of two defendant railroads. At page 82, this Commission said:

"The Ranger line and the Eastland, Wichita Falls & Gulf challenge our jurisdiction to grant the relief prayed for. *Under that portion of paragraph (3) of section 3 of the act* which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, *we have the power to make an affirmative order* if warranted by the record. *Pittsburgh & West Virginia Ry. Co.* v. *L. E. A. & W. R. R.*, 81 I. C. C. 333."

In *Alabama & Vicksburg Railway Company* v. *Jackson & Eastern Railway Company*, 271 U. S. 244, decided on May 24, 1926, the Supreme Court of the United States said:

136 "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in Par. 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under Par. 3 of Sec. 3 to *require* the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co.* v. *Lake Erie, A. & W. R. Co.*, 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in *Chamber of Commerce* v. *Wichita Falls, R. & Ft. W. R. Co.*, 109 I. C. C. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co.* v. *Public Service Commission*, 233 N. Y. 113, 119-121, 22 A. L. R. 1073, 135 N. E. 195. Com-

pare *Lake Erie, A. & W. R. Co.* v. *Public Utilities Commission,* 109 Ohio St. 103, 141 N. E. 847."

Your petitioner very respectfully submits that under the provisions of said portion of paragraph (3) of section 3 of the Interstate Commerce Act, as amended, and under said decisions, this Commission has full and complete power and authority to make said affirmative order requested by the City of Los Angeles in the prayer of its complaint herein. In its prayer in the present petition, the City will ask, very respectfully and earnestly, that said relief be now granted.

V. Subsequent to this Commission's said decision of July 6, 1925, herein, the defendant carriers made public announcement to the Railroad Commission of California during the course of one of the hearings before that Commission, that they would conduct legal warfare unto the next generation, if necessary, against any order of any public authority requiring them to carry out any passenger terminal plan in Los Angeles other than their own so-called Carriers' Plan.

Subsequent to the making of the Railroad Commission's said decision of July 8, 1927, namely, on July 9, 1927,
137 the defendant carriers made public announcement through the press of the City of Los Angeles that they will now again go to court on the ground that the Railroad Commission of California did not have the jurisdiction to render its said decision of July 8, 1927.

In view of said attitude of the defendant carriers, your petitioner deems it proper to submit to the Commission certain considerations on the subject of future litigation.

A period of approximately 2 years and 4 months intervened between the Railroad Commission's said Decision No. 9,838 of December 6, 1921, and the decision of the Supreme Court of the United States on said order, rendered on April 7, 1924.

If the Supreme Court of the United States should hereinafter decide, on review of the Railroad Commission's said decision of July 8, 1927, that this Commission has the sole and exclusive authority to make an affirmative order requiring the defendant steam railroads to construct and operate a union passenger terminal in the City of Los

Angeles, as prayed for by the City in the complaint in said Docket No. 14,778 herein, then, unless in the meantime this Commission has made such order, it would be necessary for the City of Los Angeles, after a further delay of at least two years, to come before this Commission again and ask for such order. The defendant carriers could then seek to prosecute another appeal to the Supreme Court of the United States, on other grounds, which appeal, if permitted, would presumably take another two years, or thereabouts.

As already stated, your petitioner is fully convinced that this Commission has full power and authority to make the affirmative order prayed for. If the Commission should still entertain doubts on the question of law involved, your petitioner nevertheless very earnestly prays that the Commission, in the interest of securing a final decision by the Supreme Court of the United States without any further delay than is necessary under the circumstances,
138 now make the order prayed for by the City of Los Angeles. If the defendant carriers decide to litigate that order, the Railroad Commission's said order and this Commission's order could be reviewed by the Supreme Court of the United States at one and the same time and all questions of law and fact decided by that tribunal in one further, final decision.

VI. This Commission now has before it in these proceedings a remarkably complete and thorough record, consisting not merely of the testimony taken by it but also of the entire record on which the Railroad Commission of California rendered its said Decision No. 9,838 of December 6, 1921.

In its said decision of July 6, 1925, this Commission has already decided every material issue of fact in favor of the City of Los Angeles and has, in effect, decided that on the *merits* the City is entitled to the relief for which it asks.

Before taking further action, the Commission desired only to be advised as to what further action the Railroad Commission of California would take. The California Commission has now acted and this Commission is being advised as to the action taken.

This Commission is now in a position to act under the jurisdiction which it expressly retained for the purpose of

"making such further *findings* and *orders* and issuing such *certificates* as the record warrants."

The petitioner very respectfully asks that without the introduction of further testimony and without any further proceedings unless an oral argument on the existing record be deemed desirable, the Commission now issue the certificates and make the order hereinafter specified.

139 Wherefore, the City of Los Angeles respectfully prays that the Interstate Commerce Commission now take action as follows:

1. Issue its certificates in accordance with its findings Nos. 1 to 6, inclusive, heretofore made herein and appearing in 100 I. C. C. 459-460.

2. Make its order directing the defendants Southern Pacific Company, The Atchison, Topeka & Sana Fe Railway Company and Los Angeles and Salt Lake Railroad Company, and each of them, to construct and thereafter operate a union passenger station and appurtenances within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, together with such tracks, connections and all other terminal facilities, and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, and to acquire such land, if any, as may be necessary for said purpose, at a total cost of approximately ten million dollars ($10,000,000.00) in substantial compliance with the plan outlined in "Exhibit B" attached to this petition.

3. Make such additional findings and orders, issue such further certificates and grant such other and further relief in furtherance of the relief herein asked for as the Com-

mission may find to be just and equitable and in the public interest.

Dated at Los Angeles, California, this 25th day of July, 1927.

CITY OF LOS ANGELES,
By JESS E. STEPHENS,
City Attorney,
By MILTON BRYAN,
Deputy City Attorney,
Byrne Building, Los Angeles, California.

MAX THELEN,
Special Counsel,
Balfour Building,
San Francisco, California.

(Here follows diagram marked page 140.)

141 EXHIBIT E.

Interstate Commerce Commission.

Los Angeles Passenger Terminal Cases.

No. 14778[1].

CITY OF LOS ANGELES

v.

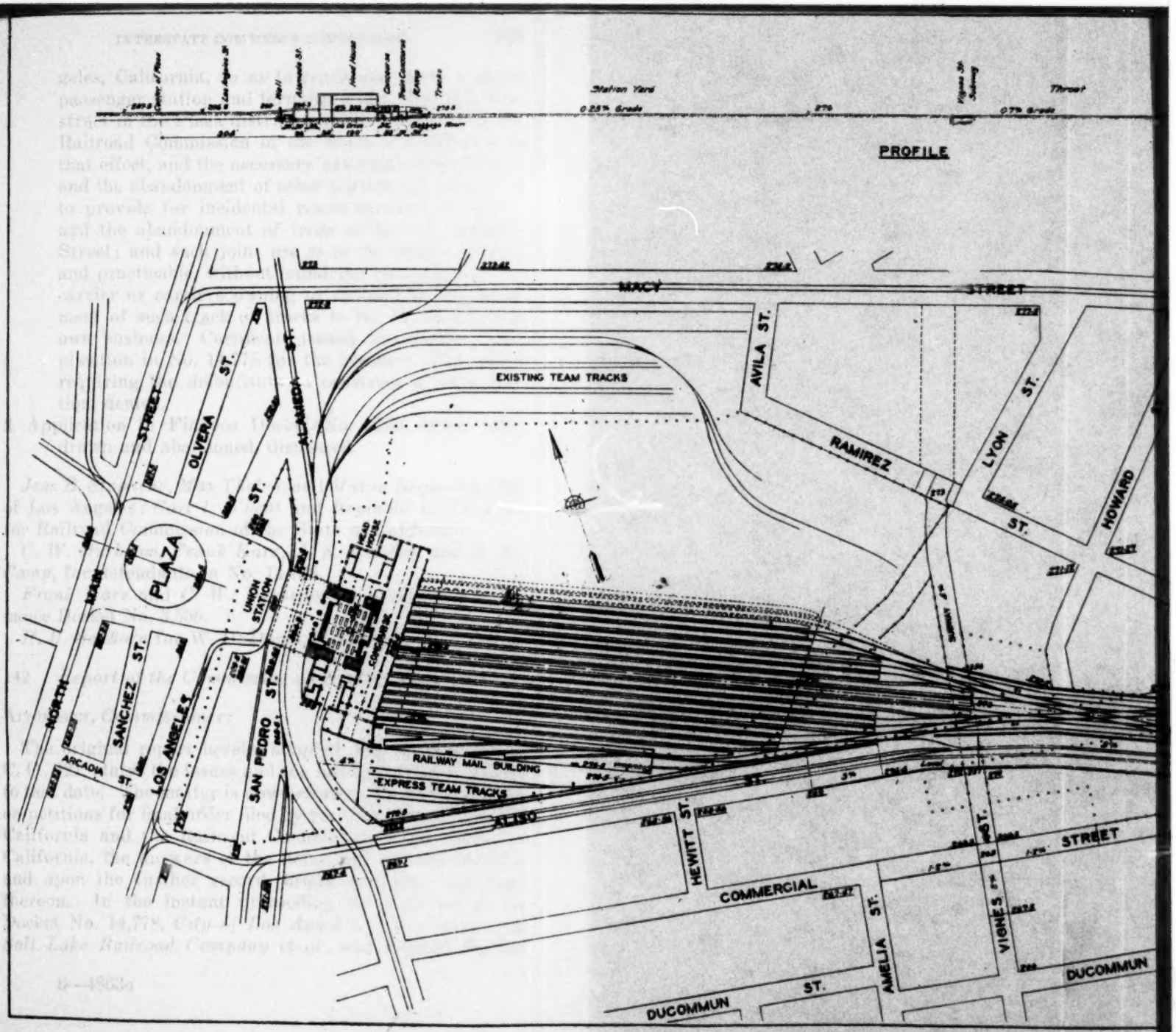
LOS ANGELES & SALT LAKE RAILROAD COMPANY et al.

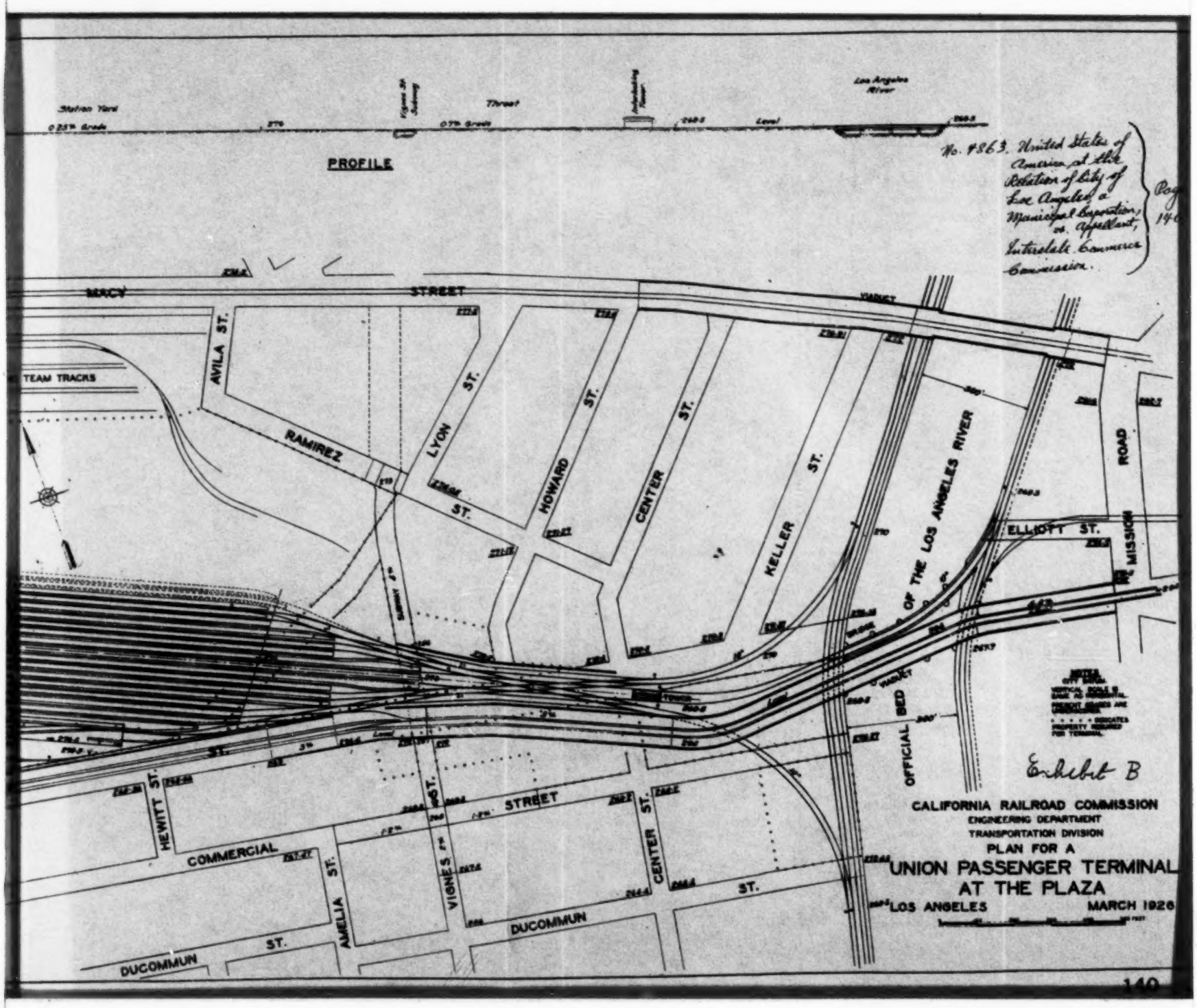
Submitted November 17, 1927. Decided May 8, 1928.

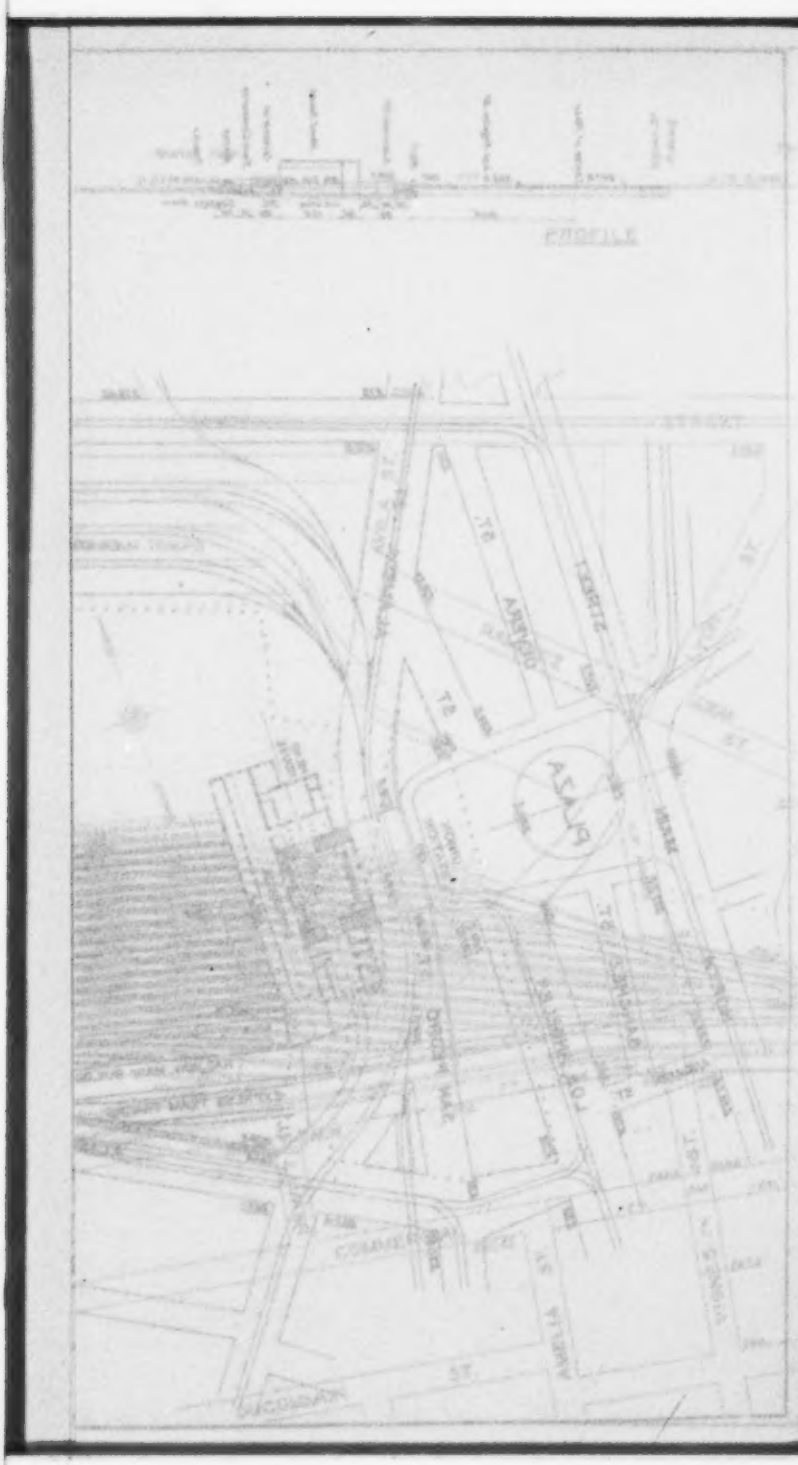
Upon Further Hearing of the Principal Complaint and of the Application in Finance Docket No. 3556.

1. Conclusions of the original report, 100 I. C. C. 421, adhered to as to public convenience and necessity requiring the extension by defendants of their respective main lines of railroad in the City of Los An-

[1]This report also embraces Finance Docket No. 3556, in the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company for Certificate of Public Convenience and Necessity.


PROFILE
Station Yard
0.25% Grade
Throat
0.7% Grade
MACY STREET
EXISTING TEAM TRACKS
AVILA ST.
RAMIREZ
LYON ST.
HOWARD ST.
ALAMEDA ST.
OLIVERA ST.
STREET
PLAZA
MAIN
UNION STATION
HEAD HOUSE
CONCOURSE
NORTH
SANCHEZ ST.
ARCADIA ST.
LOS ANGELES
SAN PEDRO ST.
RAILWAY MAIL BUILDING
EXPRESS TEAM TRACKS
ALISO
HEWITT ST.
COMMERCIAL
AMELIA ST.
VIGNES ST.
DUCOMMUN ST.
DUCOMMUN


PROFILE
No. 9863. United States of America at the Relation of City of Los Angeles a Municipal Corporation, vs. Appellant, Interstate Commerce Commission.
Page 140
MACY STREET
AVILA ST.
TEAM TRACKS
RAMIREZ
LYON ST.
HOWARD ST.
CENTER ST.
KELLER ST.
OF THE LOS ANGELES RIVER
ELLIOTT ST.
MISSION ROAD
OFFICIAL BED
HEWITT ST.
COMMERCIAL
AMELIA ST.
VIGNES ST.
DUCOMMUN ST.
Exhibit B
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
TRANSPORTATION DIVISION
PLAN FOR A
UNION PASSENGER TERMINAL
AT THE PLAZA
LOS ANGELES
MARCH 1926



geles, California, so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to order of the Railroad Commission of the State of California to that effect, and the necessary extension of main lines and the abandonment of other portions of main lines to provide for incidental rearrangement of routes, and the abandonment of train service on Alameda Street; and such joint use is in the public interest and practicable, without impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business. Certificate issued accordingly. Application in No. 14,778 for the issuance of an order requiring the defendants to construct a union station, denied.

2. Application in Finance Docket No. 3556, being withdrawn and abandoned, dismissed.

Jess E. Stephens, Max Thelen, and *Milton Bryan* for City of Los Angeles; *Carl I. Wheat* and *Reginald L. Vaughan* for Railroad Commission of the State of California.

C. W. Durbrow, Frank Karr, A. S. Halsted, and *E. W. Camp,* for defendants in No. 14,778.

Frank Karr and *C. W. Durbrow* for applicants in Finance Docket No. 3,556.

H. H. Sanborn for W. H. Daum, intervener.

142 *Report of the Commission on Further Hearing.*

AITCHISON, *Commissioner:*

The original report herein, adopted July 6, 1925, 100 I. C. C., 421, states the issues and the history of the litigation to that date. The matter is now before us, as will be shown, on petitions for final order filed by the City of Los Angeles, California and the Railroad Commission of the State of California, the answers of the defendant carriers thereto, and upon the further record, briefs, and oral argument thereon. In the instant proceeding we have before us Docket No. 14,778, *City of Los Angeles* v. *Los Angeles & Salt Lake Railroad Company et al.,* and Finance Docket

No. 3,556, *In Re Application of Southern Pacific Company et al.* for a certificate of public convenience and necessity. As will be shown, Finance Docket No. 3,556 is before us upon the dismissal of the same by the applicants therein.

The issues presented by the complaint in No. 14,778 were thus stated in the original report, 100 I. C. C. at page 422:

The City of Los Angeles is a municipal corporation of the State of California and complainant in No. 14,778. Defendants are railroads engaged in interstate transportation of passengers and freight, and enter Los Angeles. The city asks that the commission direct defendants (1) to construct, operate, and use a union passenger depot within a defined area in that city, and to acquire land necessary therefor; (2) to abandon main-line passenger and freight service, except local freight switching, on and along a portion of Alameda Street in Los Angeles; (3) to eliminate and abandon certain railroad grade crossings in the city; and (4) to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within the City of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. The only relief sought against defendant Pacific Electric Railway is the participation by it in the expense of constructing a viaduct at Aliso Street in Los Angeles to eliminate grade crossings on both banks of the Los Angeles River.

Finance Docket No. 3556, an application by Southern Pacific Company and its lessor, Southern Pacific Railroad Company, asked for a certificate of public convenience and necessity authorizing the abandonment of 0.15 miles of main-line track, and the abandonment of operation of passenger and freight train service (except freight switching service) on 6.6 miles of main line track on Alameda Street, in Los Angeles.

The Railroad Commission of the State of California appeared in support of the complaint, as intervener. Other interventions have been made for or against the com-
143 plaint.

The somewhat involved history of the proceedings is set forth on pages 423 to 425 inclusive of our orig-

inal report, and need not be restated *in extenso*. Briefly, the controversy originated in a complaint filed with the Railroad Commission of the State of California, which resulted in an order by that Commission for the elimination of certain specified railroad grade crossings along the Los Angeles River, and for the erection of a union passenger station at some site within a defined area in the vicinity of what is known as the Plaza in the City of Los Angeles, and upon the completion thereof for the railroads involved to remove all passenger and freight traffic except local-freight switching from a designated portion of Alameda Street. The Southern Pacific and the Los Angeles & Salt Lake presented to the California Commission their own plan for a joint station between those lines, known as the Arcade plan, which application after hearing was dismissed by the state Railroad Commission. The city of Los Angeles had previously taken no definite stand, but thereafter accepted the decision of the State Commission as determinative. Following a rehearing and certain modifications of the conclusions of the State Commission, which required the carriers to proceed to procure sufficient grounds for a union passenger station within a defined area, and to prepare and submit plans for a union station, and upon approval of the plans by the State Commission, to proceed with the construction of such station and terminal, and for the elimination of specified grade crossings, the State Commission's order was taken into the state courts of California. In *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission*, 190 Cal. 214, the order was held to be invalid, and the conclusion was sustained upon certiorari by the Supreme Court, *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331. Pending the review by the Supreme Court the complaint in No. 14778 was filed with us and heard, but it was not submitted until the Supreme Court had decided the case. After the Supreme Court's decision, the application in Finance Docket No. 3556 was filed, (with other applications not necessary here to be considered) and consolidated with No. 14778. The evidence previously received in the latter case was made available in the finance proceedings

also. There was further hearing upon the consolidated cases, in June, 1924, followed by our report of July 6, 1925. For convenient reference the findings made by us are reproduced in the margin.[1]

Subsequent to our decision, the Railroad Commis-
144 sion of the State of California reopened the matters pending before it for further consideration and determination. A voluminous record was made. The testimony of many interested parties, including citizens and experts others than representatives of the city of Los Angeles and of the carriers, was taken. The parties before the State Commission are the defendants in No. 14778 before us.

By decision entered July 8, 1927, made part of the record herein, the California Commission exhaustively reviewed the general situation. The findings of fact made are
145 stated in Appendix 1. The state Commission thereupon ordered that the defendants, Southern Pacific

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[1] The findings, 100 I. C. C. 459, 461, are as follows:

Upon a consideration of all the facts of record we find:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

3. That the preesent and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif. so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by de-

Company, Atchison, Topeka & Santa Fe Railway Company, and Los Angeles & Salt Lake Railroad Company, and each of them proceed to construct and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, (being the general locality previously referred to in our report and the record as the Plaza District) together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements, and changes in the existing railroad facilities of the defendants as might be reasonably necessary and incidental to the use of such union passenger station, at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in the State Commission's exhibit known as Exhibit B-4.[2] It further ordered that work upon the construction of such union station should commence within 90 days after the effective date of its order, and be completed within three years after said date. Provision is made that upon

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fendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California, will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record.

[2] The plan submitted by the California Commission in the original hearing before us is essentially the same as that known as Exhibit B-4.

and after the construction of such union passenger station the operation by the Southern Pacific Company of passenger and freight train service, excepting only industrial freight—switching service during the hours hereafter to be prescribed by proper authority, over that portion of its railroad (upon Alameda Street) between College Street and East Fifteenth Street, inclusive, in the city of Los Angeles, shall be abandoned and discontinued.

The order in express terms recites:

"This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions, and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or of the order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission;"

146 The State Commission therefore further ordered that its attorney forthwith file with us a copy of such order, together with appropriate petition or application requesting us to issue such certificates or other appropriate order or orders as may be requisite or proper in order to render the order of the State Commission effective.[3] The State Commission dismissed the application made by Southern Pacific Company and Los Angeles & Salt Lake Railroad Company for the approval of the construction of joint terminal facilities in Los Angeles, upon the lines of the Arcade plan proposed by those carriers to the State Commission as a substitute for the Plaza plan, so-called.

The California State Commission has filed with us its petition for final order. The prayer is that we issue such certificate or certificates and make and promulgate such

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[3] The State Commission made reservations of the right to make such further order or orders relating to construction, operation, modification, and abandonment of facilities and other matters as might be determined by it to be just and reasonable and as the public safety, convenience, and necessity may require.

further order or orders as may be proper or requisite in the premises to render effective the order of the California Commission, and for other appropriate relief. The petition of the city of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same. It asks that we now issue the certificates and make the order specified in its petition, namely:

(1) Issue certificates in accordance with findings 1 to 6 in our report, 100 I. C. C. 459, 460.

(2) Order the defendants to construct and thereafter operate a union passenger station and appurtenances within the Plaza site * * * at a cost of approximately $10,000,000, in substantial compliance with the plan, Exhibit B attached to the petition; and

(3) Make such additional findings and orders, issue such further certificates, etc., as may be just and equitable and in the public interest.

The answers of the defendants to the petition of the California Commission are similar. They assert

(1) The unconstitutionality of the California statute and the procedure of the state commission thereunder.

(2) Deny that this Commission had fixed and adopted any area.

(3) Allege that the plan of the California Commission's order is not practicable, will be unreasonably expensive, will unreasonably interfere with other railroad operation, particularly freight, and will not be in the interest of the public.

The defendants raise the constitutional issues as to the power of this Commission under the interstate commerce act.

147 The answers to the petition of the city of Los Angeles are similar, with this qualification: They deny that our record is complete, and allege that subsequent to the rendition of decision by this Commission, nearly 3,000 pages of testimony and numerous and elaborate exhibits were introduced in the reopened proceedings before the Railroad Commission of California relating to matters which have not heretofore been submitted to or considered

by us, which, it is alleged, show conclusively that it is not practicable to construct or operate a union passenger station in accordance with the plans and specifications referred to in the order of the California Railroad Commission.

Defendants therefore allege that it is essential that we give consideration to such evidence before rendering a decision and order herein.

The proceedings were set down by us for further hearing. Upon the further hearing, the record made and introduced before the Railroad Commission of the State of California, duly certified by it, was, by stipulation of all the parties, incorporated in the record herein, subject to the objections made during the course of the proceedings, and subject to the right of all parties to brief and argue the case as was made before us. This course, it may be observed, resulted in very considerable savings both of time and expense to the parties and the Government.

Finance Docket No. 3569 was heard and determined by us with the principal case, upon our former report. In it the Southern Pacific Company and the Los Angeles & Salt Lake sought authority to construct certain main new lines, and to extend their existing main lines so as to permit joint use and operation by them of the existing passenger station of the Southern Pacific, known as the Arcade site, hereinbefore referred to, and so as to permit the removal of Southern Pacific passenger and freight trains, except industrial switching, from Alameda Street. As appears by our former report, this application we denied. The Southern Pacific and the Los Angeles & Salt Lake allege that the application in Finance Docket No. 3556 was filed in conjunction with and as complementary to Finance Docket No. 3569, but that the latter application having been denied, it becomes necessary to continue to operate service as heretofore, and therefore the applicants do not desire to abandon the lines or service described in the application in Finance Docket No. 3556, and therefore dismiss, abandon, and withdraw the application. At the present stage of these proceedings before us, the Arcade plan is therefore not within the issues. The only plan before us, it is agreed by the parties, is the Plaza plan, prepared by the Railroad Commission of California, and accepted and sup-

ported by the City of Los Angeles through its designated municipal offices, also known in the record as Exhibit 4-B before the California Commission.

It will be observed that our findings of fact in the original report, previously set out, are in effect duplicated by findings numbered 1 to 6 of the Railroad Commission of the State of California in its decision of July 8, 1927, as appears in Appendix No. 1 hereto. The State Commission in addition found (7) that the present and future public convenience and necessity require and will require the construction by defendants and each of them of a union
148 passenger station within that portion of Los Angeles described in the third finding, with the track and other facilities reasonably necessary, convenient, or incidental to the use of such passenger station; (8) that in its opinion an adequate union passenger station could be constructed within the described portion of the city at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in its exhibit No. 4-B, which is found to be in all essential respects similar to the plan considered by us in our original decision and report; (9) that such plan for a union passenger station in the Plaza portion of Los Angeles in the opinion of the State Commission, is and would be in the public interest, and that its construction is practicable, without impairing the ability of the defendants to perform their respective duties to the public; and (10) that such construction ought reasonably to be made.

The matter before us presents questions of fact and of law.

The record before us is voluminous. It embraces the original and further hearings before us, and record made before the California commission after our original report. At the original hearing, by appropriate reference large portions of the record made in the original hearings together with voluminous exhibits before the State Commission were incorporated.

It would be easy to prolong this report into almost interminable length by undertaking detailed and meticulous examination of the facts disclosed of record. But they have been repeatedly subjected to scrutiny—first by the State Commission upon its original hearing and upon its rehearing, secondly in the original proceeding before us, and

thirdly in the reopened proceedings before the State Commission. It seems, therefore, sufficient merely to state our general conclusions with respect to the sufficiency of the facts previously found by us, and those as found by the California Commission in its additional findings, previously set forth, and supported by the record. All of the testimony of record in the original proceedings before us was examined and given careful analysis in our original report. We adhere to the conclusions there expressed, upon a further consideration of the whole record, including the subsequently imported testimony taken before the California Commission. In our judgment, the findings of the California Commission numbered 7 to 10 inclusive, as appears in the appendix and as above summarized, find sufficient support in the record. We may therefore turn to the questions of law involved.

Coming first to those raised by the defendants: (1) Questions as to the constitutionality of the California statute and the procedure of the State Commission thereunder, certainly are not within our administrative purview at this state of the proceedings. (2) The objections made to the constitutionality of provisions of the Transportation Act 1920, under which we are vested with authority in certain instances to order the construction or extension of new lines and facilities of railroad carriers, need not now be discussed by us, in view of our determination upon the application by the complainant and the California State Commission for a mandatory order requiring such construction.

149 (3) Complainants have again raised the question whether we have power to require the defendants to construct and operate a union passenger station upon the site heretofore specified in our findings. Their contention that we have such power was pressed with vigor upon the original submission before us. The complainants point to section 3, paragraph (3) and (4) of the interstate commerce act as furnishing the necessary statutory authority. As stated in the original report, at page 430, we concluded that we are not empowered to *require* the construction of a union passenger station as sought in No. 14778, under the issues framed in the complaint therein. In addition to the authorities previously brought to our attention, the complainant cites *Breckenridge Chamber of*

Commerce v. *W. F., R. & F. W. R. R. Co.*, 109 I. C. C. 81, in which, by Division 5, it was stated that under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, we have the power to deal with an issue as to the establishment of a switch connection between the tracks of railroads, and to make an affirmative order if wararnted by the record. *Pittsburgh and West Virginia Ry. Co.* v. *L. E., A. & W. R. R.*, 81 I. C. C. 333, was there cited as authority. In *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244, 250, the Supreme Court said:

"In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph (22), Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under paragraph (3) of Sec. 3 to require the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co.* v. *Lake Erie, A. & W. R. Co.*, 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in *Chamber of Commerce* v. *Wichita Falls, R. & Ft. W. R. Co.*, 109 I. C. C. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co.* v. *Public Service Commission*, 233 N. Y. 113, 119-121. Compare *Lake Erie, A. & W. R. Co.* v. *Public Utilities Commission*, 109 Ohio St. 103."

The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious. Re-examination of the whole subject again leads us to the conclusion that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint; but that we are authorized to find (1) whether the present or future public convenience and necessity permits of the proposed abandonment of line, (2) whether the proposed extensions of line are reasonably re-

quired in the interest of public convenience and necessity, and whether the expenses involved therein will impair the ability of defendants to perform tehir duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carriers, as would be necessary if a new union passenger station were established in the Plaza area, is in the public interest and practicable, without substantially impairing the ability of the
150 owning carrier to handle its own business. These are the conclusions which we reached upon the original presentation.

All issues of fact having been considered and concluded by our original report and this report on further hearing, nothing remains for us but to deny the application of the city of Los Angeles and the intervener, the Railroad Commission of the State of California, for a final order herein requiring the construction of a station as found in the public interest; but in lieu thereof issue an appropriate certificate of public convenience and necessity conformable to the findings herein; and to dismiss the application in Finance Docket No. 3556. An appropriate certificate and order will be entered.

EASTMAN, *Commissioner*, concurring in part:

I am in accord with what is done in this case, except that I believe that we should enter the order which complainants seek requiring defendants to construct and operate the union station. From the standpoint of public policy I am inclined to the view that the power over such matters should rest with the States, subject to a limited supervision on our part under paragraph (18) of section 1. But it is by no means certain in that such is the law, and there are cogent reasons which, as I see it, justify us in entering the desired order.

The history of the case is significant. Complainants at first sought and obtained an order from the California commission. This was resisted by defendants, upon the ground that Congress had exclusively occupied the field and that the power to order rested with us. This view of the matter was accepted by the Supreme Court of California. Upon appeal the Supreme Court of the United States in *R. R. Comm.* v. *Southern Pac. Co.*, 264 U. S. 331, stated the question before the court as follows:

Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920.

It cannot be said that this question was clearly answered. The concluding paragraphs of the opinion were as follows:

We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

The judgment of the Supreme Court of California is affirmed.

151 It will be noted that the court held that the City of Los Angeles, in asking us for an *order* to provide, maintain, and use a union station, took a correct course; and that it also affirmed the judgment of the California court, which had plainly held that "full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission." However, the language immediately preceding this affirmation, with respect to action by us under paragraphs (18) to (21) of section 1 of the interstate commerce act, does lend itself to the interpretation which the majority place upon our powers, and there is other language in the opinion which is susceptible of such an interpretation.

The defendants have shifted their position. In their brief before the Supreme Court they said that

the sole and exclusive power to enter orders such as were entered by the California commission has been vested in the Interstate Commerce Commission by the amendments made to the Interstate Commerce Act in 1920.

Their position now is that Congress has indeed occupied the field in paragraph (3) of section 3, but that neither the State nor the Nation has power to enter an order requiring the construction of the station, and that our only power is to grant such certificates of convenience and necessity as may be required where a carrier is voluntarily proposing new station construction.

Whether or not we have the power to enter an order is not free from doubt, but I believe that from paragraph (21) of section 1 and paragraphs (3) and (4) of section 3 such power may be derived. Possibly no one of these paragraphs fully covers the ground, but they so supplement each other than when taken together their individual deficiencies disappear.

Paragraph (21) authorizes us to require a carrier "to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this act, and to extend its line or liners." The term "car service" is confined in the Act to service in the transportation of property, and therefore limits to the extent our authority to require a carrier to provide itself with "safe and adequate facilities." There is no similar limitation, however, upon our authority to require a carrier "to extend its line or lines." Under this paragraph, therefore, we clearly may require in the instant case such new track construction as is involved in the union station project. But this leaves the station building unprovided for.

Paragraph (3) of section 3 makes it the duty of carriers, among other things, to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines." It is this provision, as stated above, upon which defendants rely in contending that Congress has exclusively occupied the field in question. In our previous decision we assumed, without deciding, that this provision

"makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would
152 not be reasonable and proper," and I think that this assumption was correct. Apparently it is conceded by the carriers. However, our conclusion was that we have no authority to enter an order to enforce this duty. This conclusion was largely predicated upon *United States* v. *Pennsylvania R. R. Co.* 242 U. S. 208, a case which arose before the transportation act, 1920, and decided that we could not require defendant to provide and furnish oil tank cars. There we had chiefly relied upon our power under section 15 to prescribe just and reasonable "practices," and the court held that this word was too obscure to justify an order requiring a special type of tank cars to be provided. But the act, as it then existed, did make it the duty of carriers to furnish "such transportation" including by reference "cars and other vehicles and all instrumentalities of shipment or carriage," upon reasonable request therefor, and the court intimated that the jurisdiction to enforce this duty was in the courts and not in this Commission. By analogy this supports the position of the majority here, although it seems that the meaning of the word "practices" was the dominant feature of the case, and there is here no reliance upon section 15 or upon that word.

However, since our previous decision in this case, we have ourselves decided in *Pittsburgh & West Virginia Ry. Co.* v. *L. E. A. & W. R. R.*, 81 I. C. C. 333, and in *Chamber of Commerce, Breckenridge, Texas* v. *W. F., R. & F. W. R. Co.*, 109 I. C. C. 81, that we have the power to enforce by affirmative order the provisions of paragraph (3) of section 3, and the Supreme Court has referred with approval to these cases in *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244. They related to the establishment of switch connections, and the majority here distinguish them by saying that the "distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case is obvious." The logic of this is not clear. In our previous decision we held, upon authority of the Supreme Court decision in the tank-car case, that power to enforce

paragraph (3) of section 3 is in the courts rather than in us. It now appears that so far, at least, as that paragraph requires switch connections, we can enforce it. But if we can enforce it in one of its aspects why not in all? There is nothing in the paragraph which distinguishes between little duties and big duties, or gives us power to enforce the one and not the other. Inasmuch as the Supreme Court has intimated that we can enforce paragraph (3) in one respect it follows necessarily, it seems to me, that we can enforce it in all respects.

Paragraph (4) of section 3 empowers us, if we find it to be practicable and in the public interest, to require the use of the terminal facilities of one carrier by another. Of this paragraph the Supreme Court said in *R. R. Comm.* v. *Southern Pac. Co., supra,*

It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

153 As I see it, the questions here with respect to this paragraph are: (1) Whether the authority can be exercised when no carrier is seeking such exercise, i e., whether we can require a carrier against its will to condemn a part of the property of another; and (2) whether the power can be exercised to compel the use of property not in any carrier's possession? As for the first question, there is nothing in the language of the paragraph, or of the Supreme Court above quoted, to indicate that the authority of this paragraph can be invoked only upon petition of some carrier, or that there must be at least one willing carrier. As for the second question, it was mentioned by the Supreme Court in the above-cited case. The court remarked that it was urged that

the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers, not theretofore used for terminals,

and it went on to say:

This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions.

This comment, it seems to me, certainly does not suggest that we have no power over the "larger and more important union stations." Moreover, complainants now point out that it has developed in the meantime that at least two-thirds of the property needed for the new station is already in the possession of the carriers, and that the expropriation of only a limited amount of private property will be necessary to round out the situation.

My conclusion is that, considering the various statutory provisions together, we probably have power to enter the desired order. But this is not the only reason for such action. Certainly a conclusion that we have no power to enter an order is at least subject to much doubt. Certainly, also, the carriers propose to litigate this case as long and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we, as well as the State commission, enter an order. This aspect of the matter was strongly and persuasively presented by complainants. In view of the manifest uncertainty as to what the law is, it is a course which we are quite justified in following and the one which is most likely to result in a needed clarification of the law.

I am authorized to state that Commissioners Lewis and McManamy join in this expression.

154 BRAINERD, *Commissioner*, dissenting:

In this case certificates of public necessity and convenience are proposed to be issued upon complaint by the City of Los Angeles and others, not upon the application of any carrier, and in fact over the objection and protest of all the defendant carriers. Paragraphs (18) to (21) of section 1, it seems to me, relate to rights sought to be exercised

by the carriers. That they deal primarily with such rights is certain. *C. C. C. & St. L.* v. *U. S.*, 72 L. Ed., 166, 168. For this reason, and for the further reason that our action fails, it seems to me, to give due consideration to the necessity for the economical management of existing transportation facilities, I dissent from the report herein.

Certificate and Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of May, A. D. 1928.

Los Angeles Passenger Terminal Cases.
No. 14778.

Abandonment of Line by Southern Pacific Co. and Southern Pacific R. R. Co.

Finance Docket No. 3556.

A further hearing and investigation of the matters and things involved in these proceedings having been had, and the commission having, on the date hereof, made and filed a report on further hearing containing its findings of fact and conclusions thereon, and having on July 6, 1925, filed its original report herein, 100 I. C. C., 421, which said reports are hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company of extensions of their respective main lines of railroad in the city of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandon-
155 ment of operation of all passenger and freight train service, except industrial freight-switching service,

on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal.

It is ordered, That the applications in No. 14778, in so far as they seek an order requiring the construction of a union passenger station and terminal in Los Angeles, Calif., be, and it is hereby, denied.

And it is further ordered, That the joint application of the Southern Pacific Company and the Southern Pacific Railroad Company in Finance Docket No. 3556 be, and it is hereby dismissed.

By the commission.

[SEAL.] GEORGE B. McGINTY,
Secretary.

156 APPENDIX No. 1.

The findings of fact by the Railroad Commission of the State of California are as follows:

(1) That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the City of Los Angeles, as described in Application No. 3346 and in the record adduced herein.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the City of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Re-

dondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, or of the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city described in paragraph three (3) above, is in the public interest and is practicable, without in our opinion, impairing the ability of the carrier or carriers owning
157 or entitled to the enjoyment of such track or tracks to handle its or their own business.

(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and the Los Angeles

and Salt Lake Railroad Company, and each of them of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-*b* herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

(10) That said construction ought reasonably to be made.

158 In the Supreme Court of the District of Columbia.

At Law.

No. 15688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

Rule to Show Cause.

Filed Jul. 12, 1928.

Upon consideration of the Petition of City of Los Angeles, a municipal corporation, filed herein on the 12th day

of July, 1928, it is by the Court, this 12th day of July, 1928,

Ordered, that the respondent, Interstate Commerce Commission, be and it is hereby directed to show cause on or before the 6th day of August, 1928, why a Writ of Mandamus should not issue, as prayed in the Petition; provided, that a copy of the Petition and of this Rule be served upon the respondent on or before the 13th day of July, 1928.

JENNINGS BAILEY,
Justice.

(Endorsed:) Service of copy of Petition & Rule accepted in behalf of Respt. this 12th day of July, 1928. Edward M. Reidy.

159 In the Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

Answer of Interstate Commerce Commission.

Filed Aug. 4, 1928.

The Interstate Commerce Commission, hereinafter called the Commission, respondent in the above-entitled proceeding, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficient in the relator's petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I. Answering sub-divisions numbered I to IV of said petition, inclusive, the Commission admits that the allegations therein contained are true.

II. Answering sub-division numbered V of said petition, the Commission admits that the allegations therein
160 contained are true, except that it disclaims information sufficient to form a belief as to the truth of the allegation "that said carriers had made frequent public admission of the necessity, in the public interest, of eliminating all railroad operations along said Alameda Street, except only industrial switching for freight.

III. Answering the first paragraph of sub-division numbered VI of said petition, the Commission admits the allegations contained therein are true.

Answering the second paragraph of said sub-division numbered VI, the Commission admits that the Santa Fe's passenger station in Los Angeles is a small brick building erected in 1893, and located along the west bank of the Los Angeles River south of First Street; that it does not meet the reasonable requirements of the travelling public in respect of the adequacy and convenience of facilities furnished or accessability of location; that a large proportion of the travelling public having occasion to use said station can do so only by crossing Alameda Street and the tracks of the Southern Pacific located thereon; and that the erection of a suitable station, if provided by the Santa Fe independently, would cost that carrier a large amount of money. Except as so admitted, the Commission disclaims information sufficient to form a belief as to the truth of the allegations contained in said paragraph.

Answering the third paragraph of said sub-division numbered VI, the Commission admits that the allegations therein contained are true except that it disclaims information sufficient to form a belief as to the truth of the allegation that the only plan that would eliminate from Alameda Street all passenger operations and all freight oper-
161 ations except freight switching consistently with public convenience, necessity and safety, is to change the location of the Southern Pacific's depot from the present Arcade site to a site in the vicinity of the Plaza.

IV. Answering sub-divisions VI to XXII, inclusive, of said petition, the Commission admits and alleges that on April 26, 1921, the Railroad Commission of California, in a proceeding before it, ordered certain carriers, termed in said petition the Southern Pacific, the Santa Fe and the

Salt Lake, to file plans for the erection of a union passenger station within a defined area in the vicinity of what is known as the Plaza in the City of Los Angeles, Calif.; that on December 6, 1921, following a rehearing on petition of the carriers, it ordered said carriers to secure sufficient land within said Plaza area for a union passenger station and terminal, to submit plans therefor and, upon their approval by said Commission, to proceed with the construction thereof; that thereafter said carriers by writs of review took said state commission's decision and order to the Supreme Court of California wherein, in *A. T. & S. F. Ry.* v. *Railroad Comm. of Calif.*, 190 Cal. 214, said court held in substance that the Transportation Act of 1920 had vested full authority over the matter of union terminal depot facilities of interstate carriers by railroad in the Interstate Commerce Commission, divesting the state commission of the jurisdiction sought to be exercised by it; that upon petition of said state commission the Supreme Court of the United States granted writs of certiorari in respect of said state court decisions, and meanwhile the City of Los Angeles filed its complaint with this Commission in Docket No. 14,778, *City of Los Angeles, complainant,* v. *L. A. & S. L. R. Co. et al., defendant,* wherein,
162 in substance it asked the Commission to require the defendant carriers to construct and operate a union passenger station and appurtenances within the Plaza area in the City of Los Angeles and to acquire the land necessary for said purpose, to abandon passenger and freight train operation except local freight switching on Alameda Street between College Street and East Fifteenth Street, to construct new track and other property, to make extensions and abandonments of lines and to arrange for such joint or other use of tracks or terminal facilities now existing or to be constructed, as may be necessary or incidental in furtherance of the relief prayed for; that on April 7, 1924, the Supreme Court of the United States rendered its decision in *Railroad Comm. of Calif.* v. *Southern Pac.* Co., 264 U. S. 331, the above-mentioned certiorari proceeding, wherein said court, in affirming the judgment of the state court, held in substance that said carriers could not be required to provide a new interstate union station and extend their main tracks thereto as ordered by the State Rail-

road Commission until the Interstate Commerce Commission shall have acted under paragraphs (18) to (20) and (22) of Section 1 of the Interstate Commerce Act; that following said last-mentioned decision, and after full hearing, this Commission issued its report in said proceeding instituted by the City of Los Angeles, 100 I. C. C. 421, wherein, while holding that it was not empowered to require the construction of a union passenger station as sought by the City of Los Angeles, it, nevertheless, made the findings of fact set forth in sub-division XII of the petition and which were, generally speaking, that public convenience and necessity permitted the abandonments of train service asked for by the City on Alameda Street, and required of said carriers such extensions and abandonments of lines and service and joint use of terminal tracks as would be nec-
163 essary or proper in connection with the establishment and operation of any union passenger station and terminal within said Plaza area which they, or any of them, may construct in accordance with a lawful order of said state commission and in connection with the rearrangement of routes incidental thereto, and that said extension would not impair said carrier's ability to perform their duties to the public; that this Commission at that time issued no certificates but stated, in effect, that it retained jurisdiction and reserved the right to alter its findings in the event that the plan for a station finally evolved by the carriers or the state commission was materially different from that "as here considered to be in the public interest"; that thereafter said state commission reopened its proceeding and, after further hearing, rendered its decision wherein it made findings of fact substantially identical with the findings that had been made by this Commission and, in addition, made the findings set forth in sub-division XIII of the petition which were, generally speaking, that public convenience and necessity required of said carriers the construction of a union passenger station within said Plaza area and other terminal facilities incidental thereto, which, in its opinion, could be done at a cost of $10,000,000 in substantial compliance with a plan prescribed by it, shown as part of Exhibit C of the petition herein, and separately marked C. R. C. Ex 4-B; that thereupon said state commission made its order requiring of said carriers the per-

formance of acts which would carry out the purport of its said findings, but said order was to become effective only after promulgation by this Commission of an order authorizing the construction, extensions and abandonments so authorized and directed by said state commission; that thereafter the City of Los Angeles filed with this Commission,
164 in said Docket 14,778, the petition, copy whereof is attached to the petition herein, marked Exhibit D, wherein, generally speaking, it asked this Commission to issue certificates in accordance with the findings theretofore made by it and above described and, in addition, to order said carriers to construct and thereafter operate a union passenger station and appurtenances within the Plaza site at a cost of approximately $10,000,000, in substantial compliance with the above-mentioned plan of said state commission; that said state commission filed in said proceeding a substantially similar petition and thereupon said carriers filed answers and appeared in opposition to the relief sought by said City and State Commission; that subsequently, after further hearing and submission of evidence, this Commission on May 8, 1928, rendered its report and order, copy whereof is attached to the petition herein, marked Exhibit E, wherein it affirmed the findings made in its earlier report and further found that the above-mentioned additional findings made by said State Commission find sufficient support in the record, and whereby it issued certificates in conformity with all said findings. The Commission, however, in its said final report and order, adhered to the conclusions expressed in its earlier report that it was not empowered to require the construction of a union passenger station as sought by the City of Los Angeles, and said State Commission, and denied their application in this particular.

Further answering sub-divisions numbered IX, XI, XII and XV, the Commission admits that the excerpts therein given from court decisions and from the reports of this Commission are correctly quoted, but respectfully refers the Court to the decisions and reports from which they are excerpted for full and complete information in the premises.

The Commission further alleges that in making the aforesaid reports and orders it considered and weighed carefully

in the light of its own knowledge and experience,
165 every fact, circumstance, condition, and provision of law, called to its attention on behalf of the parties to said proceeding, by their respective counsel, including all matters covered by the pertinent allegations of the petition herein.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in its said report of July 6, 1925, and its said report and order of May 8, 1928, which are hereby referred to and made a part of this answer.

V. The Commission, further answering the allegations of the petition, asserts and alleges that:

1. On its face the petition shows that this case was instituted in court by the relator to obtain a writ of mandamus commanding the Commission to require three certain carriers, named in the petition, to construct and use a union passenger station in the City of Los Angeles, California, if the Commission is of the opinion that such a station should be so constructed and used but pertinent provisions of law as construed by the Supreme Court of the United States, show that the Commission does not possess jurisdiction which would enable it to make such a requirement.

2. On its face the petition shows that the Commission has assumed and exercised all the jurisdiction which it is empowered to assume and exercise over the matters referred to and covered by said petition.

3. The petition does not show that the Commission has been guilty of any act or omission, which act if done, or which omission if made, would entitle the relator to
166 the relief, or any of the relief, asked for by it in and by said petition.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct and hereby prays that the rule to show cause issued herein be discharged and that the petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.

CITY OF WASHINGTON,
District of Columbia, ss:

Clyde B. Atchison, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

CLYDE B. ATCHISON.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 3rd day of August, 1928.

[SEAL.] EUGENIA W. SUTER,
Notary Public.

In the Supreme Court of the District of Columbia.

167 At Law

No. 75688.

UNITED STATES OF AMERICA, at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

Demurrer of Relator to Answer of Respondent.

Filed Aug. 10, 1928.

Now comes the City of Los Angeles, the relator, and demurs to the answer of the Interstate Commerce Commission, the respondent, on file herein, and to each subdivision thereof, on the ground that said answer and each subdivision thereof are bad in substance and do not state facts sufficient to constitute a defense to the petition of the relator on file in the above entitled proceeding.

The matters of law which the relator intends to argue are that said Interstate Commerce Commission has the power, authority and jurisdiction to consider the evidence

in Docket No. 14,778 before said Commission and referred to in the relator's petition on file herein, for the purpose of determining whether said Commission should issue the order as prayed for by the relator requriing the construction and use of a union passenger station and appurtenances in the City of Los Angeles, State of California, as described in said petition, and thereafter to make an appropriate order based on said evidence, and that this
168 Court should grant its order for the issuance of a peremptory writ of mandamus commanding and directing said Interstate Commerce Commission to consider the evidence in said Docket No. 14,778, referred to in the relator's said petition, for the purpose of determining whether said Commission should issue said order requiring the construction and use of said union passenger station.

Dated at the City of Washington, District of Columbia, this 10th day of August, 1928.

JESS E. STEPHENS,
City Attorney, City of Los Angeles,
City Hall, Los Angeles.

MAX THELAN,
Special Counsel for Relator,
Balfour Building,
351 *California Street,*
San Francisco, California.

EDWIN C. BLANCHARD,
Associate Counsel for Relator,
404 *Southern Building,*
Washington, D. C.

169 Thursday, October 18, 1928

Session resumed pursuant to adjournment, Hon. William Hitz, Justice, presiding.

* * * * * * *

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

At Law

No. 75,688.

Come now the parties hereto by their respective attorneys of record, and thereupon this cause heretofore submitted to the Court upon the petition and the exhibits thereto, the answer of the rspondent to said petition and the demurrer of the relator to said answor having been considered, it is ordered that said demurrer be and the same is hereby overruled.

Thereupon the petitioner by its attorneys elects to stand upon its petition. Wherefore, it is considered that the petition herein be, and the same is hereby dismissed, that petitioner take nothing by this suit, that respondent go hence without day and recover of petitioner its costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment the petitioner, by its said attorneys, in open court, notes an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars with the clerk in lieu thereof.

WILLIAM HITZ, *J.*

170 *Memorandum.*

October 18, 1928—$50 deposited by Plaintiff in lieu of bond on appeal.

Assignments of Error.

Filed Oct. 18, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

City of Los Angeles, a municipal corporation, the Petitioner and Relator herein, makes the following assignments of error, which it avers occurred upon the trial of this cause, to-wit:

1. That the Court erred in overruling the demurrer of the Relator to the answer of the Respondent on file herein.

2. That the Court erred in holding and deciding that the petition did not contain statements or allegations of fact sufficient to constitute a cause of action against the Respondent or to entitle the Relator to the relief prayed for in its petition or to any relief in the premises.

3. That the Court erred in entering an order dismissing the Relator's petition for a writ of mandamus.

4. That the Court erred in rendering judgment
171 the Relator upon the overruling of the Relator's demurrer to the Respondent's answer on file herein.

5. That the Court erred in rendering judgment against the Relator, whereas the judgment ought to have been rendered in favor of the Relator and against the Respondent.

6. That the Court erred in holding and deciding that the Interstate Commerce Commission does not have jurisdiction to make the order requested by the City of Los Angeles in its complaint in Docket No. 14778 before the Interstate Commerce Commission.

7. That the Court erred in holding and deciding that the Interstate Commerce Commission does not have jurisdic-

tion under Paragraph 3 of Section 3 and/or under Paragraph 4 of Section 3 and/or under Paragraphs 18 and 20, inclusive, of Section 1 and/or under the other provisions of the Interstate Commerce Act, as amended, to make the order requiring the defendant carriers in said Docket No. 14778 to construct, maintain and operate a union passenger station in the City of Los Angeles, as prayed for by the City of Los Angeles in its complaint in said Docket No. 14778 before said Interstate Commerce Commission.

Wherefore the Relator, City of Los Angeles, a municipal corporation, prays that the judgment of the Supreme Court of the District of Columbia may be reversed.

JESS E. STEPHENS,
City Attorney, City of Los Angeles,
City Hall, Los Angeles.

MAX THELEN,
Special Counsel for Relator,
Balfour Building,
351 *California Street,*
San Francisco, California.

172 EDWIN C. BLANCHARD,
Associate Counsel for Relator,
404 *Southern Building,*
Washington, D. C.

Designation of Record.

Filed Oct. 18, 1928.

In the Supreme Court of the District of Columbia.

At Law.

No. 75688.

UNITED STATES OF AMERICA at the Relation of CITY OF LOS ANGELES, a Municipal Corporation, Relator,

VS.

INTERSTATE COMMERCE COMMISSION, Respondent.

Thee Clerk will please include in the record on appeal the following:

1. Petition for writ of mandamus, with Exhibits A to E, inclusive, thereto attached.

2. Rule to show cause.
3. Answer of respondent to above petition.
4. Demurrer of relator to said answer of respondent.
5. Order overruling said demurrer and judgment for respondent.
6. Certificate showing entry of appeal and the date thereof.
7. Assignments of error.
173 8. This designation of record.

JESS E. STEPHENS,
City Attorney, City of Los Angeles,
City Hall, Los Angeles.

MAX THELEN,
Special Counsel for Relator,
Balfour Building,
351 *California Street,*
San Francisco, California.

EDWIN C. BLANCHARD,
Associate Counsel for Relator,
404 *Southern Building,*
Washington, D. C.

Service of within designation of record admitted this — day of October, 1928.

DANIEL W. KNOWLTON,
Chief Counsel Interstate Commerce Commission.

174 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 173, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 75688 at Law, wherein United States of America, at the relation of City of Los Angeles,

a municipal corporation is Relator and Interstate Commerce Commission is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 25th day of October, 1928.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4863. United States of America at the relation of City of Los Angeles, a municipal corporation, appellant, vs. Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Oct. 27, 1928. Henry W. Hodges, Clerk.

(4053)

163 Tuesday, January 8th, A. D. 1929

UNITED STATES OF AMERICA AT THE RELATION OF CITY OF LOS ANGELES, a Municipal Corporation, appellant
vs.
INTERSTATE COMMERCE COMMISSION
No. 4863

On motion, the appellant is allowed to file a reply to the brief of the appellee and also to the brief as amicus curiæ filed herein.

The argument in the above entitled cause was commenced by Mr. Max Thelen, attorney for the appellant, and was continued by Mr. Daniel W. Knowlton, attorney for the appellee, and was concluded by Mr. Max Thelen, attorney for the appellant.

164 In the Court of Appeals of the District of Columbia

UNITED STATES OF AMERICA AT THE RELATION OF CITY OF LOS ANGELES, a Municipal Corporation, appellant
vs.
INTERSTATE COMMERCE COMMISSION
No. 4863.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Before MARTIN, *Chief Justice;* ROBB and VAN ORSDEL, *Associate Justices*

Mr. Justice Van Orsdel delivered the opinion of the court:

VAN ORSDEL, Associate Justice. The city of Los Angeles, California, a municipal corporation, filed a petition for mandamus in the Supreme Court of the District of Columbia to compel defendant, the Interstate Commerce Commission, to make an order requiring the Southern Pacific, the Atchison, Topeka & Santa Fe, and the Los Angeles & Salt Lake Railroad Companies to construct, maintain, and operate, a union passenger station in the city of Los Angeles, at a point near what is known as the Plaza.

It appears that in 1921 the Railroad Commission of California, in a proceeding before it, ordered the carriers named to file plans for the erection of a union station at the point above designated in the city of Los Angeles, and in a subsequent order required
165 the carriers to secure sufficient land for the construction of the station and terminal, to submit plans therefor and, upon approval by the commission, to proceed with the construction. The carriers appealed from the decision to the Supreme Court of California. (190 Cal. 214.) The court reversed the order on the ground that the transportation act of 1920 (41 Stat. 456), had vested full authority over union depot facilities of interstate carriers by railroads in the Interstate Commerce Commission, divesting the State commission of jurisdiction in the premises. From this decision the State commission carried the case to the Supreme Court of the United States.

While the case was there pending, the city of Los Angeles filed a complaint with the Interstate Commerce Commission praying the commission to require the defendant carriers to construct and operate the union passenger station in question. During the pendency of this case before the commission, the Supreme Court rendered its opinion in Railroad Com. of Cal. *vs.* Southern Pac. Co. (264 U. S. 331), hereafter for convenience referred to as the "Los Angeles Case," in which the judgment of the Supreme Court of California was affirmed, the court holding in substance, however, that defendant carriers could not be required to provide a union station and extend their terminal tracks until the Interstate Commerce Commission had acted under paragraphs 18 to 21 of section 402 of the transportation act.

166 The commission then issued its report in the proceeding instituted by the city of Los Angeles (100 I. C. C. 421), holding that it was powerless "to require carriers to construct union passenger stations under conditions such as are here present." It, however, made findings in accordance with its interpretation of the decision of the Supreme Court to the effect that public convenience and necessity required such extensions and abandonments of lines and service and joint use of terminal tracks as would be necessary in the establishment and operation of a union passenger station at the point designated; and that the expense would not impair the ability of the roads to perform their respective duties to the public. The commission, however, refused to issue certificates as provided in the transportation act, but retained jurisdiction of the case reserving the right to alter its findings in event that the plan evolved by the carriers or the State commission for the establishment of a union station might be materially different from that "here considered to be in the public interest".

The State commission reopened the case and on further hearing rendered a decision, with findings, substantially identical with those made by the Interstate Commerce Commission, and in addition found that public convenience and necessity required the defendant
167 carriers to construct a union passenger station at the point designated, with the terminal facilities incidental thereto, which in its opinion could be done at a cost of $10,000,000. The State commission thereupon made an order requiring defendant carriers to carry out its findings when the Interstate Commerce Commission should promulgate an order authorizing the construction, extensions, and abandonments, as directed by the State commission.

The city of Los Angeles and the State commission thereupon filed with the Interstate Commerce Commission petitions asking the commission to issue certificates in accordance with the findings theretofore made by it; and to order said carriers to construct and thereafter operate the union passenger station in compliance with the plan announced by the State commission. The carriers filed answers opposing the relief sought. Evidence was taken, and the Interstate

Commerce Commission, on May 8, 1928, rendered its report and order affirming the findings made in its earlier report with the finding that the report of the State commission is sufficiently supported in the record, and it accordingly issued certificates in conformity with said findings. (Los Angeles Passenger Terminal Case, 142 I. C. C. 489.) The commission, however, adhered to the decision reached in the earlier case to the effect that it was not empowered to require
168 the construction of a union passenger station and denied the application in this particular.

It was this decision which brought about the present suit, and from the decision of the court below dismissing the petition, this appeal is prosecuted.

We think the Interstate Commerce Commission was in error in holding that it is without power under the transportation act to require the carriers in question to construct a union station. The purpose in the mind of Congress in vesting the commission the extensive control over interstate railways, set forth in the transportation act, is expressed in Dayton-Goose Creek Railway Company *vs.* United States (263 U. S. 456, 478) where the court said: "The new Act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals,
169 their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

This broad supervisory power, it is urged, does not extend to the requirement that an interstate carrier or system of carriers may be required by the commission to install an interstate union station; but running throughout the act are provisions which authorize the commission to impose most drastic limitatons on a carrier's control and use of its property in order to secure the convenience and welfare of the shipping and traveling public in interstate commerce. It specifically imposes upon the commission the power and duty, when required by public convenience and necessity, to convert the passenger and freight station of one interstate carrier into a union station or depot. The inconsistency of granting this power without the analogous power of requiring a number of carriers converging at a given point to erect for the convenience of the traveling public and the carriers themselves an interstate union station is pointed out in the Los Angeles case, 344, where the court said: "This would be

giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers
170 limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations or interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of section 402."

Under this construction of paragraphs 18 to 21, it is clear that an interstate carrier is not permitted to extend its line of railroad, or to construct a new line, or acquire a line of road or extension thereof, or engage in transportation over such line or lines, until it has procured from the Interstate Commerce Commission a certificate that public convenience requires it. Neither can a carrier abandon all or any portion of its line without a similar certificate. As was further said in the Los Angeles case: "Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals. * * * Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and extend their main tracks thereto as ordered by the State Railroad Commission."

171 Following this suggestion, the Interstate Commerce Commission issued the following certificate: "It is hereby certified, that the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company, of extensions of their respective main lines of railroad in the City of Los Angeles, California, so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment and operation of all passenger and freight train service, except incidental freight-train and freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to east Fifteenth Street, inclusive, in the City of Los Angeles, California; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, California, as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal."

It will be observed that the commission in its certificate as to necessity and convenience omits any certification to the fact "that the expense involved therein will not impair the ability of the carrier to perform its duty to the public". This, however, we think is affirmatively implied in the certification as to necessity and convenience. Especially in view of the findings of fact found by the commission in its earlier decision (100 I. C. C. 421, 459, 460), to the effect that the public convenience and necessity requires "the extension by defendants of their respective main lines of steam railroad in the City of Los Angeles, so as to reach and properly serve any union passenger station and terminal" at the point designated. Following these findings of fact, the commission further found as follows: "That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public." In view of this express finding of fact by the commis-
173 sion, the court would certainly not be justified in failing to determine the fundamental question of jurisdiction here involved merely upon the failure of the commission to make an express certification on this point. The point at most is not jurisdictional but incidental to the exercise of jurisdiction by the commission. The question before us is not one involving direction of the commission as to how it shall act, but merely the requirement that it take jurisdiction of the matter of establishing proper terminals and a union station at the point designated and proceed therein as required by law. (Interstate Commerce Com. *vs.* Humboldt Steamship Co., 224 U. S. 474.)

We think the act clearly manifests the intention of Congress to give the Interstate Commerce Commission jurisdiction over the rearranging and extension of terminals and the establishment of union depots by converging interstate railroad lines, and to limit the jurisdiction of State commissions to matters purely intrastate and such exercise of police power as may be essential over interstate lines within the State.

Paragraph 22 of section 402 provides as follows: "The authority of the commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment
174 of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or all street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation".

The court in the Los Angeles case (345) interpreted the above limitation upon the power of the Interstate Commerce Commission as follows: "There is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main

track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in designation does not come within paragraphs 18 and 21. One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a State commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate
175 Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers".

We come now to the conceded facts as set forth in paragraph XVIII of the petition. The railroad terminal properties and trackage which would be used in carrying out the union depot plan, including the entire trackage along the Los Angeles River and nearly all of the land on which the union station is to be erected, are now owned by the three carriers here involved. The small portion of land still in private ownership is needed only for a proper approach to the main depot and for properly completing the project as planned. This land could be acquired, of course, by the carriers, either by purchase or by eminent domain under direction of the appropriate public authority.

It thus appears that the whole project is such that under the act it has been removed from the jurisdiction of the State commission and placed within the jurisdiction of the Interstate Commerce Commission. If, in carrying out the project, necessity arises for the state to exercise its police power in the matter of protecting street crossings, etc., it would be merely incidental to the general scheme, cooperative with and not hostile to the jurisdiction of the Interstate Commerce Commission.

The broad power conferred upon the Interstate Commerce
176 Commission is set forth in paragraphs 3 and 4 of section 405 of the act. Paragraph 4 empowers the commission to regulate the terminal facilities of converging carriers to the extent of requiring an interchange of trackage by the different lines to facilitate the better operation and handling of freight and passengers.

Paragraph 3 provides as follows: "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, or charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper." This section,

we think, vests the Interstate Commerce Commission with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines. The term "reasonable, proper, and equal facilities" is broad and comprehensive enough to include not only trackage but adequate station facilities.

177 The carriers, through counsel, challenge the constitutional power of Congress to vest the Interstate Commerce Commission with jurisdiction to order the construction and operation of a union passenger station as prayed for by the city of Los Angeles. This contention is based on decisions of the courts to the effect that the commission may not order the carriers to perform a different service than that which they have undertaken to render. It is well established that while public authority under legislative sanction and in the exercise of police power may require railroad companies to construct and operate union passenger stations, the facts upon which such orders are based must be reasonable.

In view of the facts in the instant case, the contention that the carriers can not be required to extend their tracks to reach the proposed union station is without merit. The situation here disclosed is most reasonable, and well within the jurisdiction of administrative authority. The three interstate carriers involved all enter the city of Los Angeles from the north, and pass under what is known as the North Broadway Viaduct over the Los Angeles River. The main lines of the Southern Pacific and Santa Fe extend along the west bank of the river, and the main line of the Salt Lake road runs along the east bank. The Santa Fe's track runs directly across the

178 site of the proposed terminal, the Southern Pacific track also extends across the site along Alameda Street, and the Salt Lake's branch line track extends directly across the river from the site. It will be observed that to reach the terminal, instead of any material extension of trackage, it means merely a convenient readjustment of existing tracks.

Prior to the enactment of the transportation act of 1920, the States in many instances, either by constitution or statutes, had vested jurisdiction in their railroad commissions to compel the construction of union stations. (Railroad Commission of Alabama *vs.* Northern Alabama Railway Co., 182 Ala. 357; Railroad Commission of Alabama *vs.* Alabama Great Southern Railway Co., 185 Ala. 354; Mayor of Worcester *vs.* Norwich & Worcester R. R. Co., 109 Mass. 103; Dewey *vs.* Atlantic Coast Line, 142 N. C. 392; State *vs.* St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491.) These State decisions go to the extent of upholding orders requiring a carrier to acquire additional property through eminent domain, the abandonment of existing passenger stations, or the acquiring of the right to use the property of a rival railroad.

It was in effect held by the Supreme Court of California in the present controversy (190 Cal. 214) that the power vested in
179 the State railroad commission of that State had passed by the transportation act of 1920 to the Interstate Commerce Commission. In this instance the State railroad commission derived its jurisdiction through a provision of the constitution of the State of California. It was held, nevertheless, that Congress in the exercise of its Constitutional power to regulate interstate commerce could divest the State railroad commission of its jurisdiction and vest it in the Interstate Commerce Commission. This ruling was affirmed in the Los Angeles case.

The procedure adopted by the city of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles case, where the court said: "We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one."

180 The judgment is reversed with costs, and the cause is remanded for further proceedings, not inconsistent with this opinion.

(Indorsed:) No. 4863. United States of America at the Relation of City of Los Angeles, a Municipal Corporation, appellant, *vs.* Interstate Commerce Commission. Opinion of the court per Mr. Justice Van Orsdel. Court of Appeals. District of Columbia. Filed February 25, 1929. Henry W. Hodges, Clerk.

181 Monday, February 25th, A. D. 1929

UNITED STATES OF AMERICA, AT THE relation of City of Los Angeles, a Municipal Corporation, appellant *vs.* INTERSTATE COMMERCE COMMISSION	No. 4863.	January Term, 1929

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said Supreme

Court for further proceedings not inconsistent with the opinion of this court.

Per Mr. JUSTICE VAN ORSDEL.

FEBRUARY 25, 1929.

182 In the Court of Appeals of the District of Columbia

UNITED STATES OF AMERICA, AT THE RELATION OF City of Los Angeles, a Municipal Corporation, appellant
v.
INTERSTATE COMMERCE COMMISSION APPELLEE
} At Law No. 4863

Application for stay of mandate

Now comes the appellee in the above-entitled cause, by counsel, and moves the court, under rule 24 of the Rules of the Court of Appeals of the District of Columbia, to stay the mandate in the said cause pending application to the Supreme Court of the United States for a writ of certiorari.

DANIEL W. KNOWLTON,
Attorney for Appellee.

Acknowledgment of service

Service of copy of the above application for stay of mandate is admitted March 7, 1929.

EDWIN C. BLANCHARD,
Attorney for Appellant.

183 (Indorsed:) At Law No. 4863. In the Court of Appeals of the District of Columbia. United States of America, at the relation of City of Los Angeles, a municipal Corporation, appellant *v.* Interstate Commerce Commission, appellee. Application for stay of mandate. Daniel W. Knowlton, counsel for Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Mar. 8, 1929. Henry W. Hodges, clerk.

184 Saturday, March 9th, A. D. 1929

U. S. EX REL. CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, appellant
vs.
INTERSTATE COMMERCE COMMISSION
} No. 4863

On consideration of the motion to stay the mandate in the above entitled cause under rule 24, it is ordered by the court that said motion be and the same is hereby granted.

185 In the Court of Appeals of the District of Columbia

UNITED STATES OF AMERICA, AT THE RELATION of City of Los Angeles, a municipal corporation, appellant *v.* INTERSTATE COMMERCE COMMISSION, appellee	At Law No. 4863. Designation for transcript on application for writ of certiorari

The clerk will please prepare a transcript on application for writ of certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the court.
4. The judgment.
5. Application for stay of mandate and order allowing the same.
6. This designation.
7. Clerk's certificate.

DANIEL W. KNOWLTON,
Attorney for Appellee.

Acknowledgment of service

Service of copy of the above designation is admitted March 7, 1929.

EDWIN C. BLANCHARD,
Attorney for Appellant.

186 (Indorsed:) At Law No. 4863. In the Court of Appeals of the District of Columbia. United States of America, at the Relation of City of Los Angeles, a Municipal Corporation, appellant, *v.* Interstate Commerce Commission, appellee. Designation for transcript on application for writ of certiorari. Daniel W. Knowlton, Counsel for Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Mar. 9, 1929. Henry W. Hodges, clerk.

187 Court of Appeals of the District of Columbia

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 186, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals per designation of counsel, in the case of United States of America at the relation of City of Los Angeles, a Municipal Corporation, appellant, *vs.* Interstate Commerce Commission. No. 4863,

January Term, 1929, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 11th day of March, A. D. 1929.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

O

Supreme Court of the United States

Order allowing certiorari

Filed April 15, 1929

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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